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**RACE, GENDER, REGION AND
DEATH SENTENCING IN
COLORADO, 1980–1999**

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This paper examines the administration of the death penalty in Colorado. We first identify all cases (n=21) in which defendants were sentenced to death in Colorado, 1972–2005, and all cases (n=110) in which the death penalty was sought, 1980–1999. We then compare the race and gender of all homicide victims with the race and gender of victims in the 110 death penalty cases. Overall, we find that the death penalty is most likely to be sought for homicides with white female victims, and that the probability of death being sought is 4.2 times higher for those who kill whites than for those who kill blacks.

INTRODUCTION

The United States is unique among western democracies in its retention of the death penalty. According to Amnesty International, the best

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source for international execution data, by early 2006 capital punishment had been abolished in law or practice in 123 nations, while another 73 countries continued to authorize the use of the death penalty.¹ Some 92 percent of the 2,148 known executions that were carried out around the globe in calendar year 2005 took place in just four countries: China, Iran, Saudi Arabia, and the United States.²

Between 1930 and 1967, there were 3,859 executions in the United States, 54 percent of which took the lives of African American prisoners.³ The racial disparity was particularly apparent among those executed for rape: 405 of the 455 men executed for rape between 1930 and 1967 were black (89 percent).⁴ In part because of concerns about racial bias, during the late 1960s several petitioners began to challenge the constitutionality of the death penalty.⁵ In 1972, these challenges found success when the Supreme Court, in *Furman v. Georgia*,⁶ in effect invalidated all existing death penalty statutes in the United States. As a result of *Furman*, 631 men and 2 women on death rows in 32 states had their death sentences reduced to prison terms.⁷ At the time, many agreed with Jack Greenberg, one of the attorneys from the NAACP Legal Defense and Education Fund who worked on the *Furman* case, "There will no longer be any more capital punishment in the United States."⁸

The victory for death penalty abolitionists, however, was short-lived. After *Furman*, several states drafted revised death penalty statutes, some of which were approved by the Court in 1976.⁹ In 1977 the "modern" era of executions began in the United States when Gary Gilmore faced a firing squad in Utah,¹⁰ and between then and December 31, 2005, another 1,003 inmates were executed.¹¹ By early 2006, capital punishment was authorized in 38 states (and by the U.S. Government and

1. Amnesty International, *The Death Penalty: Facts and Figures on the Death Penalty*, <http://web.amnesty.org/pages/deathpenalty-sentences-eng> (last visited Apr. 23, 2006).

2. *Id.*

3. U.S. DEP'T OF JUSTICE, NATIONAL PRISONER STATISTICS BULLETIN SD-NPS-CP-5, CAPITAL PUNISHMENT 1976 at 16 (1977).

4. *Id.*

5. MICHAEL MELTSNER, CRUEL AND UNUSUAL: THE SUPREME COURT AND CAPITAL PUNISHMENT 73-105 (1973).

6. *Furman v. Georgia*, 408 U.S. 238 (1972).

7. MELTSNER, *supra* note 5, at 292-93.

8. *Id.* at 291.

9. *See* *Gregg v. Georgia*, 428 U.S. 153, 207 (1976) (upholding the constitutionality of Georgia's statutory sentencing system under which the defendant was sentenced to death).

10. *See generally* NORMAN MAILER, THE EXECUTIONER'S SONG (1979) (recounting the story of Gilmore's life and death).

11. This execution list is regularly updated by the Death Penalty Information Center. *Facts About the Death Penalty*, <http://www.deathpenaltyinfo.org/FactSheet.pdf> (last visited Feb. 27, 2006).

the U.S. Military), while 12 states and the District of Columbia did not permit executions.¹²

The revision of death penalty statutes prompted by *Furman* did not eliminate concerns about whether modern death sentences are being applied in a race-neutral fashion. Concerns about racial disparities in death sentences were among several issues that fueled legislators in Nebraska to call for a moratorium on capital punishment in 1999¹³ and legislators in New Hampshire to vote to abolish the death penalty later that year.¹⁴ In both states the legislation was vetoed by the state's governors.¹⁵ Concerns about racial bias also were partially responsible for the governors of Illinois¹⁶ (in 2000) and Maryland¹⁷ (in 2002) imposing moratoriums on executions in their states. In 2006, the New Jersey legislature, also concerned with disparities in death sentencing and other problems with the death penalty, passed a bill calling for a moratorium on executions.¹⁸ This legislation was signed by the governor.¹⁹

This Article focuses on capital punishment in Colorado. We begin with two goals. First, we will recount the history of the death penalty in Colorado from 1972 through calendar year 2005. We begin in 1972 because that was the year of *Furman*, and, consequently, the beginning of the “modern era” of the death penalty in the United States. Further, a general history of the death penalty in Colorado prior to 1972 is already available.²⁰ To achieve this post-*Furman* overview of the death penalty in Colorado, we will review relevant legislation and court decisions and document all executions and death sentences in Colorado from 1972 through 2005.

12. See Death Penalty Information Center, State by State Information, <http://www.deathpenaltyinfo.org/state/> (last visited Feb. 27, 2006).

13. Robynn Tysver, *Death-Penalty Study OK'd*, OMAHA WORLD-HERALD, May 28, 1999, at 1.

14. John Kifner, *A State Votes to End Its Death Penalty*, N.Y. TIMES, May 19, 2000, at A16; John DiStaso, *Shaheen Vetoes Death Penalty in NH: Legislators React to Veto*, THE UNION LEADER (Manchester N.H.), May 20, 2000, at A1.

15. See DiStaso, *supra* note 14.

16. Dirk Johnson, *Illinois, Citing Faulty Verdicts, Bars Executions*, N.Y. TIMES, Feb. 1, 2000, at A1; Ryan Halts Executions While Errors are Probed, CHICAGO SUN-TIMES, Jan. 31, 2000, at 3.

17. Francis X. Clines, *Death Penalty is Suspended in Maryland*, N.Y. TIMES, May 10, 2002, at A20.

18. David W. Chen, *Suspension of the Death Penalty Is All but Assured in New Jersey*, N.Y. TIMES, Jan. 6, 2006, at B1; Michael Booth, *Codey Leaves Office With a Flair, Signing Bevy of Bills Into Law; On His Desk*, N.J. L.J., Jan. 16, 2006.

19. Booth, *supra* note 18; Leonard Post, *More States Review Death Penalty Laws*, NATIONAL L.J., Jan. 16, 2006, at P4.

20. See generally Michael L. Radelet, *Capital Punishment in Colorado: 1859–1972*, 74 U. COLO. L. REV. 885 (2003).

A second goal of this Article is to compare cases in which the death penalty was sought with all homicides that occurred in Colorado during the twenty-year period from January 1, 1980 through December 31, 1999. Research assessing various correlates of death sentencing, primarily race²¹ and gender,²² has been conducted in several states, but little research has been conducted to ascertain whether death sentences in Colorado are being equitably pursued and applied. We address this gap by examining cases in which the death penalty was sought in Colorado for homicides that occurred in the 1980s and 1990s, and comparing the characteristics of these cases with characteristics of all Colorado homicides. By so doing, we can determine if extra-legal factors, such as the race, ethnicity, or gender of the defendant and/or victim and the county of the homicide are associated with the decision to seek death. Because the vast majority of research on the relationship between race and death sentencing conducted over the past three decades has found that death sentencing is correlated with the victim's race and ethnicity, and not the defendant's, we focus herein primarily on victim attributes.

To set the stage for our examination of the application of the death penalty in Colorado in the modern era, this Article begins by providing a brief overview of the pre-*Furman* history of the death penalty in the state. This history began soon after white settlers arrived in the Denver area in 1859. We then proceed in Part II to review some of the post-*Furman* research that has been conducted in different states on the issue of race and death sentencing. Similarly, in Part III we discuss recent research on gender disparities in modern death sentencing. Part IV then describes the methodology we employed and data we utilized to study the modern application of the death penalty in Colorado. Part V summarizes the results of our inquiries, first focusing on all cases where the death penalty was imposed, 1972–2005, and then on all cases where the death penalty was sought, 1980–1999. In this section, we compare cases in which the death penalty was sought with all homicides in the state.

Our conclusions are presented in Part VI. Overall, the data show that the death penalty is infrequently imposed in Colorado. Between 1972 and the end of 2005 it had been sought in over 100 cases and imposed in 21 cases. Of those 21 cases, only one inmate had been executed by the end of 2005 and two remained on death row. We conclude that this low rate of “success,” from the perspective of the state, can only be

21. See *infra* notes 68–115 and accompanying text.

22. For information on women sentenced to death in the U.S. since 1973, see Victor L. Streib, *Death Penalty for Female Offenders, January 1, 1973, through December 31, 2005*, <http://www.law.onu.edu/faculty/streib/documents/FemDeathDec2005.pdf> (last visited Feb. 27, 2006).

described as a failed state policy. Equally distressing is our finding that the odds of seeking a death sentence were much higher for those suspected of killing whites than for those suspected of killing blacks or Hispanics, and much higher for those suspected of killing white women than for other homicide suspects in the 110 cases where the death penalty was sought between 1980 and 1999.

We now turn our attention to the use of the death penalty in Colorado prior to the 1972 decision in *Furman*.

I. BACKGROUND

Until 1889, all hangings in Colorado were the responsibility of local counties, so executions took place in the town or city where the conviction was obtained (rather than in one central location) and most were open to the public. Although legally mandated executions first occurred in 1859, the death penalty was formally instituted as a means of punishment in Colorado in 1861 when the first territorial legislature met in Denver.²³ Legislators mandated a sentence of death for the crime of murder, and the defendant, if convicted by a jury, was hanged “neither less than fifteen nor more than twenty-five days from the time of sentencing.”²⁴ In 1870, new legislation was passed that limited the availability of the death penalty to cases where the defendant was found guilty of murder that was deliberate, premeditated, or committed during the commission of a felony.²⁵ In 1883 the statute was again changed, primarily to remove a loophole that prohibited a death sentence for those who pled guilty to murder.²⁶ At the same time, the 1883 statute established degrees of murder: the death penalty was mandatory for first-degree murder and unavailable for second-degree murder.²⁷

Hanging was the sole form of execution during this period.²⁸ Between 1859 and 1889, a total of 25 men were legally hanged.²⁹ Attendance at executions was usually high, with as many as 15,000–20,000 watching a hanging in Denver in 1886.³⁰ Then, in 1889, a law was

23. Radelet, *supra* note 20, at 896; Roxane J. Perruso, *And Then There were Three: Colorado's New Death Penalty Sentencing Statute*, 68 U. COLO. L. REV. 189, 194 (1997).

24. Perruso, *supra* note 23, at 194 n.23.

25. *Id.* at 194 n.26.

26. *Id.* at 195.

27. *Id.* at 195 n.30.

28. Radelet, *supra* note 20, at 949–51 tbl.1.

29. *Id.* at 894–900.

30. *Id.* at 954 tbl.5.

passed mandating that all executions were to be carried out by the warden at the state penitentiary.³¹

The second era of the death penalty in Colorado is marked by the 45 executions by hanging in Cañon City between 1890 and 1933.³² On June 3, 1890, Noverto Griego became the first prisoner to be hanged in the state prison in Cañon City (where executions continue to be carried out to this day).³³ This era is marked by a short experiment with the abolition of capital punishment that was prompted mainly by religious leaders and began in 1897.³⁴ However, primarily because of several highly-publicized lynchings, the ban on legal executions lasted only four years.³⁵ In 1901, the death penalty was resurrected by the legislature and new standards were added.³⁶ The jury was given the choice to sentence those found guilty of first-degree murder to death or life imprisonment with hard labor.³⁷ Defendants less than eighteen years old and those whose convictions were based solely on circumstantial evidence could not be sentenced to death.³⁸

The third pre-*Furman* era of Colorado's death penalty history began in 1934, when Colorado became the second state (after Nevada) to use lethal gas as its method of execution.³⁹ Executions by hanging were often botched; too often the prisoner's neck was not broken and he was left to die a slow death through strangulation.⁴⁰ Therefore, in 1934 the state switched to the gas chamber, hoping that this new apparatus would provide the state with a more humane way to execute prisoners.⁴¹ Between then and *Furman* in 1972, 32 men were asphyxiated in the state's gas chamber.⁴² No women have ever been executed in Colorado.

The state's death penalty statute faced a major challenge on May 5, 1965, when the legislature passed an Act that abolished the death penalty effective January 1, 1967, contingent upon approval by voters. The referendum was held in November 1966, but it "failed by nearly a two-to-

31. *Id.* at 901-02.

32. *Id.* at 949 tbl.1.

33. *Id.* at 949-51 tbl.1.

34. *Id.* at 907-08.

35. *Id.* at 903.

36. *Id.* at 907-12.

37. *Id.*

38. *Id.* at 912-13

39. *Id.* at 918-19.

40. *Id.* at 916 n.144.

41. *Id.* at 917-18.

42. *Id.* at 949-51 tbl.1.

one margin” when Coloradans voted 389,707 to 193,245 to retain capital punishment.⁴³

On June 29, 1972, when the Supreme Court handed down its decision in *Furman*, Colorado was among the 32 states that held inmates under a sentence of death.⁴⁴ While *Furman* emptied America’s death rows, it was decided on a 5–4 vote,⁴⁵ and numerous legislators throughout the country held out hope that the Court would approve new death penalty laws if they could be narrowly crafted. Colorado was among those states that decided to bring back capital punishment.⁴⁶ In 1974, state lawmakers in Denver drafted a bill reinstating the death penalty and placed it on the ballot for voter consideration.⁴⁷ The measure was approved by the voters in November 1974 by a vote of 451,403 to 286,805,⁴⁸ thereby authorizing executions (pending final approval from the judiciary).

In 1976, those who worked to restore the death penalty were victorious when, in a set of five cases led by *Gregg v. Georgia*,⁴⁹ the Court struck down mandatory death penalty statutes but upheld sentencing formulas that allowed death sentences in some cases in which aggravating circumstances were determined to be present. Executions resumed the following year in Utah, and, at the time, it appeared that Colorado was also free to resume executions.

Two years later, however, the Colorado Supreme Court ruled that the state’s 1974 death penalty statute was unconstitutional because it failed to allow sentencing juries to consider the full range of mitigating factors related to the circumstances of the offense or the offender in their sentencing decisions.⁵⁰ This led the legislature to amend the statute in

43. Perruso, *supra* note 23, at 198; Summary of Proposed Colorado Constitutional Amendments 1964–2003, http://www.state.co.us/gov_dir/leg_dir/lcsstaff/research/Ballot_Hist_table_bottom.htm (last visited Mar. 1, 2006).

44. MELTSNER, *supra* note 5, at 293. The *Furman* decision led to the reversal of two death sentences in Colorado. Jack Olsen, 2 in *Colo. Death Row Spared by Court Ruling*, DENVER POST, June 29, 1972, at 3.

45. *Furman v. Georgia*, 408 U.S. 238 (1972).

46. By the end of 1975, “30 states had enacted new or revised death penalty statutes since *Furman*.” U.S. DEP’T OF JUSTICE, NATIONAL PRISONER STATISTICS BULLETIN SD-NPS-CP-4, CAPITAL PUNISHMENT 1975 at 5 (1976).

47. See Act of Mar. 19, 1974, ch. 52, sec. 4, 1974 Colo. Sess. Laws 251, 252 (codified as amended at COLO. REV. STAT. § 16-11-103 (Supp. 1975)).

48. Carol Kasel, *History of the Death Penalty Law in Colorado*, ROCKY MOUNTAIN NEWS, Feb. 25, 2003, at 10A.

49. *Gregg v. Georgia*, 438 U.S. 153 (1976). In other decisions announced the same day, the new death penalty statutes in Florida and Texas were approved. *Proffitt v. Florida*, 428 U.S. 242 (1976); *Jurek v. Texas*, 428 U.S. 262 (1976). However, mandatory death penalty statutes in North Carolina and Louisiana were not. *Woodson v. North Carolina*, 428 U.S. 280 (1976); *Roberts v. Louisiana*, 428 U.S. 325 (1976).

50. See *People v. Dist. Court*, 586 P.2d 31, 34–35 (Colo. 1978).

1979.⁵¹ The new legislation required juries to decide: (1) if at least one aggravating factor existed, (2) if any mitigating factors existed, (3) whether or not the mitigating factors outweighed aggravating factors, and (4) if the defendant should be sentenced to death or life in prison.⁵²

The next major change in the death penalty statute occurred in 1988, when, among other things, the legislature voted to change the method of execution from lethal gas to lethal injection.⁵³ This rendered the state's gas chamber, which now sits in the parking lot of the prison museum in Cañon City, obsolete.

The statute managed to survive constitutional scrutiny⁵⁴ until being struck down in July 1991.⁵⁵ The Colorado Supreme Court found the 1988 law was unconstitutional because it eliminated the fourth step in jury sentencing, which required juries to return a sentence of death if mitigating factors did not outweigh aggravating factors.⁵⁶ The court ruled that death sentences could never be mandatory; a prison sentence must always be an option.

This led the legislature to meet in a special session in September 1991 to repeal the 1988 law and to enact a similar statute that added the required fourth step.⁵⁷ During this session, life in prison was defined as "life without the possibility of parole,"⁵⁸ thereby ending the possibility of release from prison for those convicted of first-degree murder but spared the death penalty.

By the early 1990s, there was growing concern among Colorado legislators that too many defendants were being improperly sentenced to prison terms rather than death. Consequently, on June 5, 1995, the legislature decided to remove the life-or-death decision from jurors and put it

51. See Act of Aug. 7, 1979, ch. 158, sec. 1, 1979 Colo. Sess. Laws 673, 673-75 (codified as amended at COLO. REV. STAT. § 16-11-103 (Supp. 1979)) (current version at COLO. REV. STAT. § 18-1.3-1201 (2005)).

52. See Julia C. Martinez, *Death-penalty Changes Now Law; Owens Signs Bill, but Fate of 3 Still in Doubt*, DENVER POST, July 14, 2002, at B1; Howard Pankratz, *CU Expert Was Key to Ill. Decision*, DENVER POST, Jan. 15, 2003, at B2.

53. See Act of Apr. 11, 1988, ch. 114, sec. 1-3, 1988 Colo. Sess. Laws 673, 673-75 (codified as amended at COLO. REV. STAT. § 16-11-103 (Supp. 1988)) (current version at COLO. REV. STAT. § 18-1.3-1201 (2005)); Perruso, *supra* note 23, at 200.

54. See Perruso, *supra* note 23, at 199.

55. *People v. Young*, 814 P.2d 834, 846-47 (Colo. 1991); Perruso, *supra* note 23, at 200 ("As a result [of declaring the sentencing statute unconstitutional] the death penalty could not be imposed for crimes committed on or after July 1, 1988, and prior to September 20, 1991."); Kasel, *supra* note 48.

56. See Perruso, *supra* note 23, at 200 (citing *Young*, 814 P.2d at 846).

57. See Act of Sept. 20, 1991, 1991 Colo. Sess. Laws 8-13 (codified as amended at COLO. REV. STAT. § 16-11-103 (Supp. 1992)) (current version at COLO. REV. STAT. § 18-1.3-1201 (2005)); see also Perruso, *supra* note 23, at 200.

58. 1991 Colo. Sess. Laws 9.

into the hands of judges, who theoretically could be recalled by the voters if their decisions in death penalty cases were unpopular.⁵⁹ This ended Colorado's 135-year history of allowing juries to determine which defendants should be sentenced to life and which should be sentenced to death.⁶⁰ Under the new system, a three-judge panel decided whether to impose a sentence of life or death, and any death sentence required a unanimous vote.⁶¹ The new law took effect July 1, 1995.

Over the next seven years, three defendants (Francisco Martinez, William "Cody" Neal, and George Woldt) were sentenced to death by three-judge panels. However, in *Ring v. Arizona* (June 24, 2002), the Supreme Court ruled that juries, not judges, must be responsible for finding the statutory aggravators needed to justify death sentences.⁶² In light of *Ring*, on February 24, 2003, the state supreme court declared Colorado's three-judge sentencing system unconstitutional and ordered life prison terms for Martinez and Woldt.⁶³ Later, Neal's death sentence was vacated and a life sentence was imposed by a district court judge.⁶⁴ Two other defendants, Abe Hagos and Randy Canister, were spared penalty phase proceedings by *Ring* because the decision was announced after their convictions but before the penalty phases of their trials had been conducted.⁶⁵

Colorado Governor Bill Owens, upset by the fact that *Ring* left Colorado without a functioning death penalty law, quickly called the legislature into special session in hopes that the lawmakers would enact a new death penalty statute that would put sentencing authority back into the hands of juries. The legislature met in Denver in early July 2002 (just two weeks after *Ring* was announced) to enact the changes. When Governor Owens signed the bill on July 12, 2002, Colorado became the first state to pass legislation that (legislators hoped) would bring the state into compliance with *Ring*.⁶⁶

Subsequent history showed that the special session was not needed. In the 3½ years following the special session, only one person was sen-

59. See COLO. REV. STAT. § 16-11-103(1)(a) (Supp. 1996) (current version at COLO. REV. STAT. § 18-1.3-1201 (2005)); see also Perruso, *supra* note 23, at 200.

60. See Perruso, *supra* note 23, at 201.

61. See *id.*

62. 536 U.S. 584, 618 (2002).

63. Woldt v. People, 64 P.3d 256, 259 (Colo. 2003); Howard Pankratz, *Justices Take Two Off Death Row: Colorado Court Voids Sentencing by Judges; Life Terms Ordered*, DENVER POST, Feb. 25, 2003, at A1.

64. See '99 Death Sentence Commuted for Neal, DENVER POST, Dec. 14, 2003, at B2.

65. See People v. Hagos, 110 P.3d 1290, 1290–91 (Colo. 2005); People v. Canister, 110 P.3d 380, 381 (Colo. 2005); Howard Pankratz, *2 Killers Spared in High Court's Ruling on '02 Sentencing Law*, DENVER POST, Apr. 19, 2005, at B1.

66. See Kasel, *supra* note 48; Martinez, *supra* note 52.

tenced to death in Colorado, and only after waiving his right to a jury and entering a guilty plea.⁶⁷

II. RESEARCH ON RACE AND DEATH SENTENCING

Soon after new death penalty statutes were passed in the wake of the *Furman* decision in 1972, researchers began to evaluate whether post-*Furman* death sentencing was correlated with extra-legal factors such as race or region. By 1990 there were 28 studies that had addressed this question. In that year, the United States General Accounting Office (“GAO”) published an overview of those 28 studies.⁶⁸ They found that the 28 studies, taken as a whole, supplied strong evidence that the victim’s race was correlated with contemporary death sentencing:

In 82 percent of the studies, race of victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks. This finding was remarkably consistent across data sets, states, data collection methods, and analytic techniques.⁶⁹

Thus, at least until 1990, statistical evidence indicated a strong relationship between the victim’s race and death sentencing. Unfortunately, no Colorado study was among the 28 reviewed.

Despite the consistent finding that death sentencing is associated with the race of the victim, the Supreme Court has not been impressed. By any measure, the most comprehensive research ever produced on sentencing disparities in U.S. criminal courts is the work of David Baldus and his colleagues conducted in Georgia during the 1970s and 1980s.⁷⁰ After statistically controlling for some 230 variables, these researchers concluded that the odds of a death sentence for those who killed whites in Georgia were 4.3 times higher than the odds of a death sentence for

67. In February, 2003, Edward Montour was sentenced to death for the murder of a prison guard. He waived his right to a jury and pled guilty, and thus the final sentence was determined by the trial judge. See Howard Pankratz, *Prison Slaying Brings Death Sentence: Convict Faces Execution for Murder of Worker*, DENVER POST, Feb. 28, 2003, at B1. At the end of 2005, only he and Nathan Dunlap were under a death sentence in Colorado. See *infra* app. A.

68. See GEN. GOV’T DIV., U.S. GEN. ACCOUNTING OFFICE REP. GGD-90-57, DEATH PENALTY SENTENCING: RESEARCH INDICATES PATTERN OF RACIAL DISPARITIES (Feb. 26, 1990).

69. *Id.* at 5 (citation omitted).

70. See DAVID C. BALDUS ET AL., EQUAL JUSTICE AND THE DEATH PENALTY: A LEGAL AND EMPIRICAL ANALYSIS (1990).

those who killed blacks.⁷¹ Attorneys representing Georgia death row inmate Warren McCleskey took these data to the Supreme Court in 1987, claiming racial bias in the administration of the death penalty in Georgia. But the Court rejected the argument, as well as the idea that any *statistical* pattern of bias could prove bias in McCleskey's *individual* case.⁷²

The vote in the *McCleskey* case was 5–4. Interestingly, the decision was written by Justice Lewis Powell, who was then serving his last year on the Court. Four years later, Powell's biographer asked the retired justice if he wished he could change his vote in any single case. "Yes," Powell replied, "*McCleskey v. Kemp*."⁷³ Powell, who dissented in *Furman* and in his tenure on the Court remained among the justices who regularly voted to sustain death sentences, had changed his mind: "I have come to think that capital punishment should be abolished . . . [because it] serves no useful purpose."⁷⁴ Had Powell had this realization a few years earlier, it is quite likely that the death penalty would have been, at least temporarily, abolished.

Coincidentally, the one study that has examined post-*Furman* death sentencing in Colorado was also conducted by the research team headed by David Baldus.⁷⁵ He and his colleagues examined all death-eligible homicide cases that occurred between August 7, 1979, and June 30, 1984.⁷⁶ Their research identified 200 death-eligible murders, involving 184 defendants and resulting in 133 homicide convictions and four death sentences.⁷⁷ Their study found there was no meaningful way to distinguish the cases of three of the four death-sentenced defendants when compared to numerous cases with similar overall culpability that resulted in a life sentence or less.⁷⁸ The researchers then examined race-of-victim effects on sentencing, controlling for several aggravating and mitigating circumstances, such as the deliberateness of killing, relationship between defendant and victim, and vileness of murder.⁷⁹ The data revealed that cases involving white victims were substantially more

71. *McCleskey v. Kemp*, 481 U.S. 279, 287 (1987).

72. *See id.* at 292–97.

73. JOHN C. JEFFRIES, JR., JUSTICE LEWIS F. POWELL, JR.: A BIOGRAPHY 451 (1994).

74. *Id.* at 451–52.

75. Some of these data were reported in David C. Baldus et al., *Arbitrariness and Discrimination in the Administration of the Death Penalty: A Challenge to State Supreme Courts*, 15 STETSON L. REV. 133 (1986) [hereinafter *Challenge to State Supreme Courts*]. A more comprehensive report is David C. Baldus et al., *Arbitrariness and Discrimination in Colorado's post-Furman Capital Charging and Sentencing Process: A Preliminary Report* (unpublished manuscript, Oct. 1, 1986) [hereinafter *Colorado's post-Furman Process*].

76. Baldus et al., *Challenge to State Supreme Courts*, *supra* note 75, at 147.

77. Baldus et al., *Colorado's post-Furman Process*, *supra* note 75, at 1.

78. *Id.* at 27.

79. *Id.* at 35–36.

likely to result in first-degree murder convictions than cases involving non-white victims.⁸⁰ The odds of a first-degree murder conviction were three times higher for a defendant with a white victim than a similarly situated defendant with a non-white victim.⁸¹

Several studies have been conducted since the 1990 GAO report that show that racial disparities in death sentencing continue. In 1991, shortly after the GAO study was released, Michael Radelet and Glenn Pierce released the results of their most recent Florida study.⁸² Funded by the Florida Supreme Court's "Racial and Ethnic Bias Study Commission," the study examined some 15,000 Florida homicides, covering the years 1976 through 1987.⁸³ After correcting for missing data, the final sample analyzed included 10,142 cases, 3.6 percent of which resulted in a death sentence.⁸⁴ The authors focused on race-of-victim effects.⁸⁵ Initially, they found that 5.9 percent of those who killed whites and one percent of those who killed blacks were sentenced to death.⁸⁶ This was not because of any greater probability for whites more often than blacks to be victims of murders with additional felony circumstances present.⁸⁷ Among the homicides with accompanying felonies, 16.2 percent of those who killed whites and 3.3 percent of those who killed blacks were sentenced to death.⁸⁸ Radelet and Pierce went on to examine the effects of defendant-victim relationship, number of victims, victim's sex, type of weapon, and location of crime, none of which could explain the race effects.⁸⁹ Overall, when all the explanatory variables were assessed with a linear equation, the authors found that the odds of a death sentence for those suspected of killing whites were 3.42 times higher than the odds of a death sentence for those suspected of killing blacks.⁹⁰

In a 2001 study released by University of North Carolina-Chapel Hill, researchers Isaac Unah and Jack Boger found that race "infects and undermines" the capital punishment system of that state.⁹¹ The re-

80. *Id.* at 37.

81. *Id.* at 37 n.26.

82. Michael L. Radelet & Glenn L. Pierce, *Choosing Those Who Will Die: Race and the Death Penalty in Florida*, 43 FLA. L. REV. 1 (1991).

83. *Id.* at 18-19.

84. *Id.* at 20.

85. *Id.* at 20-24.

86. *Id.* at 22.

87. *Id.* at 22-24.

88. *Id.* at 24.

89. *Id.*

90. *Id.* at 28.

91. Isaac Unah & Jack Boger, *Race and the Death Penalty in North Carolina: An Empirical Analysis, 1993-1997* (2001), <http://www.unc.edu/~jcboger/NCDeathPenaltyReport2001.pdf>.

searchers looked at the effects of 113 potential factors in 502 cases in which the death penalty was imposed from 1993 through 1997.⁹² The odds of receiving a death sentence rose by 3.5 times or more among those defendants (regardless of the defendant's race) who murdered white persons.⁹³

David Baldus and his colleagues examined 700 cases involving a homicide conviction in Nebraska from 1973 to 1999.⁹⁴ The researchers identified 175 death-eligible cases (because of multiple trials, there were actually 185 prosecutions where the death penalty was a possible outcome), of which 89 included penalty trials.⁹⁵ No evidence was found of either race-of-victim or race-of-defendant disparities in death sentences imposed in penalty trial decisions or among all death-eligible cases.⁹⁶ However, the odds that a death-eligible case would advance to a penalty trial were significantly higher in large urban areas, principally Omaha and Lincoln, than they were in other parts of the state.⁹⁷ Because virtually all death-eligible black defendants in the state reside in these large urban areas, their cases were significantly more likely to advance to a penalty trial than their non-black counterparts statewide, even though there was no evidence of racial bias in charging decisions within those counties.⁹⁸ For this reason, the researchers concluded that the administration of the Nebraska death penalty has an "adverse impact" on racial minorities, since they are more susceptible to death penalty prosecutions than their counterparts in more rural parts of the state.⁹⁹

Results of a comprehensive study funded by the state of Maryland were released on January 7, 2003.¹⁰⁰ Led by University of Maryland criminologist Ray Paternoster, the researchers found strong race-of-victim effects and regional variations in both the decision to seek and impose death.¹⁰¹ The study examined nearly 6,000 first- and second-

92. *Id.* at 6, 19.

93. *Id.* at 4–5.

94. See David C. Baldus et al., *Arbitrariness and Discrimination in the Administration of the Death Penalty: A Legal and Empirical Analysis of the Nebraska Experience (1973–1999)*, 81 NEB. L. REV. 486 (2002).

95. *Id.* at 496.

96. *Id.* at 584, 588.

97. *Id.* at 590.

98. *Id.* at 591–99.

99. *Id.* at 591.

100. See Raymond Paternoster et al., *Justice by Geography and Race: The Administration of the Death Penalty in Maryland, 1978–1999*, 4 MARGINS 2 (2004); Sarah Koenig, *Racial Factor Found in Md. Capital Cases*, BALT. SUN, Jan. 8, 2003, at B1; Adam Liptak, *Death Penalty Found More Likely When Victim Is White*, N.Y. TIMES, Jan. 8, 2003, at A12.

101. Paternoster et al., *supra* note 100, at 35–44.

degree murder cases in Maryland from 1978 to 1999.¹⁰² Of those, 1,311 were identified by the researchers as eligible for the death penalty¹⁰³ and 76 resulted in death sentences.¹⁰⁴ Inconsistencies were abundant. For example, for similar homicides, defendants in Baltimore County were 23 times more likely to be sentenced to death than were defendants in the city of Baltimore.¹⁰⁵ Other factors equal, “the odds that a death eligible defendant will be sentenced to death is [sic] almost four times higher if they kill a white victim than if no victim was white.”¹⁰⁶

After Governor George Ryan imposed a moratorium on executions in Illinois in 2000, he asked Glenn Pierce and Michael Radelet to examine death sentencing in that state. They collected data on more than 5,300 homicides in Illinois occurring between 1988 and 1997 that ended with a conviction of first-degree murder. Even after statistically controlling for some two dozen factors that might affect death sentencing,¹⁰⁷ they found that, for similar homicides, the probability of a death sentence was 60 percent lower for those who kill blacks than for those who kill victims of other races.¹⁰⁸ They also found that the odds of a death sentence were about 84 percent lower in Cook County, which includes Chicago, than for similar homicides that occurred in other areas of the state.¹⁰⁹ These disturbing patterns were one of the major reasons why in January 2003, Governor Ryan decided to commute the death sentences of 167 death row inmates in Illinois to prison terms.¹¹⁰

The most recent study of race and death sentencing focused on California, the state with the largest death row in the United States.¹¹¹ Here Pierce and Radelet compared 34,000 homicides in California from the 1990s to a subset of 302 cases in which a death sentence was imposed.¹¹²

102. *Id.* at 15.

103. *Id.* at 15, 19.

104. *Id.* at 20.

105. *Id.* at 33–34. There are twenty-four main local government agencies in Maryland: twenty-three counties and the City of Baltimore. See Maryland Archives: Local Government, <http://www.mdarchives.state.md.us/msa/mdmanual/01glance/html/county.html> (last visited Feb. 27, 2006).

106. Patemoster et al., *supra* note 100, at 36.

107. For example, the researchers controlled for such factors as the defendant’s prior criminal record, contemporaneous felony charges, the age and gender of the victim, and the number of homicides. See Radelet & Pierce, *Race, Religion, and Death Sentencing in Illinois 1988–1997*, 81 OR. L. REV. 39, 57–58 (2002).

108. *Id.* at 65.

109. *Id.*

110. *Id.*

111. See Glenn L. Pierce & Michael L. Radelet, *The Impact of Legally Inappropriate Factors on Death Sentencing for California Homicides, 1990–1999*, 46 SANTA CLARA L. REV. 1 (2005).

112. *Id.* at 12–14.

They found that the highest rates of death sentencing were in rural counties with a high proportion of non-Hispanic whites.¹¹³ Further, even after controlling for selected aggravating circumstances, those who were convicted of killing white victims had a higher probability of being sentenced to death than other homicide defendants.¹¹⁴

The above studies indicate that racial disparities in capital sentencing have been found in several states.¹¹⁵ One limited study from the early 1980s found widespread disparities in Colorado data,¹¹⁶ but that work has not been replicated or expanded. Whether or not disparities are present (or persistent) in contemporary Colorado death sentencing remains largely unknown.

III. RESEARCH ON GENDER AND DEATH SENTENCING

While a significant amount of research has been conducted on racial disparities in death penalty cases, research specific to gender disparities is not as abundant.¹¹⁷ Investigation of possible gender biases in death sentencing are often conducted simultaneously with research on racial disparities.¹¹⁸ Much that is written on gender disparities focuses on the higher proportion of capital cases where the victim is a white female. Researchers have also examined gender differences among those sentenced to death. In this project, we are particularly interested in exploring the possible effects of the gender of the homicide victim.

Even though males are victimized by violent crime at higher rates than females, female victims, in general, tend to receive more attention than male victims.¹¹⁹ Given similar crimes, not all victims are seen as equally deserving of the full wrath of the criminal justice system. These perceptions are correlated with the victim's race and ethnicity. Barak, Flavin, and Leighton argue that "[a] white, middle-class woman may be

113. *Id.* at 19–20.

114. *Id.* at 22–24.

115. See also David C. Baldus & George Woodworth, *Race Discrimination in the Administration of the Death Penalty: An Overview of the Empirical Evidence with Special Emphasis on the Post-1990 Research*, 39 CRIM. L. BULL. 194 (2003) (similarly concluding that there has been a racial disparity in capital sentencing cases after 1990).

116. See Baldus et al., *supra* note 75.

117. For information on women sentenced to death in the United States since 1973, see VICTOR L. STREIB, *DEATH PENALTY FOR FEMALE OFFENDERS: JANUARY 1, 1973, THROUGH DECEMBER 31, 2005* (2006), <http://www.law.onu.edu/faculty/streib/documents/FemDeathDec2005.pdf>.

118. Marian R. Williams & Jefferson E. Holcomb, *Racial Disparity and Death Sentences in Ohio*, 29 J. CRIM. JUST. 207 (2001).

119. GREGG BARAK ET AL., *CLASS, RACE, GENDER, AND CRIME: SOCIAL REALITIES OF JUSTICE IN AMERICA* 161–63 (2001).

seen as the ultimate 'victim,' deserving the most sympathy"¹²⁰ This is often demonstrated in the media, as Sorenson and her colleagues found in their study of newspaper coverage of homicides.¹²¹ They studied homicides reported in the *Los Angeles Times* and found that white, female victims who were very young or very old received the most media coverage.¹²² The authors suggest that this differential coverage reflects community perceptions about what types of homicide victims are given the most social value.¹²³

In the years before the Civil War, it was not uncommon to see a white man who raped a white woman punished with anywhere from two to 20 years incarceration, and the rapist of a black woman could receive as little as a fine.¹²⁴ As recently as the mid-twentieth century, rapes of white women by black men were much more likely than other rapes to be treated as capital offenses.¹²⁵ Rape involving other racial combinations did not attract similar attention from the legal system.¹²⁶ "While execution rates for all crimes were much higher for [b]lack men than for white men, the differential was most dramatic when the crime was the rape of a white woman."¹²⁷ Phyllis Crocker suggests that death penalty cases involving rape in addition to murder perpetuate a "gendered form of racism," since black women victims of rape and murder receive less attention.¹²⁸

Those who murder women are more likely to be executed than those who murder men. According to the NAACP Legal Defense and Educational Fund, 49.37 percent of the 1,004 people executed in the United States, 1976 through December 31, 2005, were executed for killing

120. *Id.* at 213.

121. Susan B. Sorenson et al., *News Media Coverage and the Epidemiology of Homicide*, 88 AM. J. PUB. HEALTH 1510 (1998).

122. *Id.* at 1511.

123. *Id.* at 1514.

124. AMNESTY INTERNATIONAL, *KILLING WITH PREJUDICE: RACE AND THE DEATH PENALTY* 3 (1999).

125. Marvin E. Wolfgang & Marc Riedel, *Rape, Racial Discrimination, and the Death Penalty*, in *CAPITAL PUNISHMENT IN THE UNITED STATES* 99 (Hugo A. Bedau & Chester M. Pierce eds., 1976). Between 1930 and 1979, 405 of the 455 defendants executed for rape in the United States were African American (89.5 percent). U.S. DEP'T OF JUSTICE, NAT'L PRISONER STATISTICS BULLETIN SD-NPS-CP-8, *CAPITAL PUNISHMENT 1979* at 16 (1980).

126. Jennifer Wriggins, *Rape, Racism, and the Law*, in *THE CRIMINAL JUSTICE SYSTEM AND WOMEN: OFFENDERS, PRISONERS, VICTIMS, AND WORKERS* 335 (Barbara Raffel Price & Natalie J. Sokoloff eds., 3d ed. 2004).

127. *Id.* at 338.

128. Phyllis L. Crocker, *Is the Death Penalty Good for Women?*, 4 BUFF. CRIM. L. REV. 917, 919 (2001).

2006] DEATH SENTENCING IN COLORADO (1980–1999) 565

women.¹²⁹ At first glance this is not surprising, since females constitute approximately 50 percent of the general population. Nonetheless, this is an overrepresentation based on the gender distribution of homicide victims. Table 1 presents data on the gender of both offenders and victims in homicides in the United States during the year 2002. The male offender-male victim combination is the largest, encompassing 65.1 percent of the homicides. Males make up 75 percent of those murdered (65.1 plus 9.9), whereas females are 25 percent of all homicide victims (22.6 plus 2.4). Therefore, males are three times more likely than females to be murdered. Overall, women are 25 percent of the murder victims, but nearly half of those executed were convicted of killing women. Radelet and Pierce's Florida death sentencing study found that defendants with a female victim have a 6.7 percent chance of being sentenced to death, as opposed to a 2.5 percent chance if the victim was male.¹³⁰ When also taking race of the victim into account, cases with white female victims were more likely to result in death sentences than cases where black women were killed.¹³¹

Table 1: Homicides by Gender of Defendant and Victim, 2002 (in proportions)¹³²

Offender / Victim	Percentage of All Homicides
Male / Male	65.1
Male / Female	22.6
Female / Male	9.9
Female / Female	2.4

All homicides 1976–2002: Proportion of Male Victims = 76.4
Proportion of Female Victims = 23.6

The above studies suggest that in at least some jurisdictions, there are gender-based disparities in capital sentencing. However, no research has specifically examined this issue in Colorado. We now turn our attention to the methodology we used to shed light on these questions.

129. NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, DEATH ROW U.S.A. 8 (Winter 2006), http://www.naacpldf.org/content/pdf/pubs/drusa/DRUSA_Winter_2006.pdf. The 985 inmates were convicted of killing 1,467 victims. The NAACP Legal Defense and Education Fund has been in the forefront of battles against the death penalty since the 1960s. See generally MELTSNER, *supra* note 5 (describing the role of the Legal Defense Fund in the case of *Furman v. Georgia*, 408 U.S. 238 (1972)).

130. Radelet & Pierce, *supra* note 82, at 26.

131. *Id.* See also Jefferson E. Holcomb et al., *White Female Victims and Death Penalty Disparity Research*, 21 JUST. Q. 877 (2004).

132. JAMES A. FOX & MARIANNE W. ZAWITZ, HOMICIDE TRENDS IN THE UNITED STATES, <http://www.ojp.usdoj.gov/bjs/homicide/homtrnd.htm> (last visited Jan. 3, 2005).

IV. DATA

A. *Death Penalty Cases*

We began by identifying two overlapping sets of cases: (1) all those with defendants who were sentenced to death in Colorado, 1972–2005, and (2) all those in which the death penalty was sought for homicides that occurred during the twenty years between January 1, 1980, and December 31, 1999.

We identified 21 cases in which the death penalty was imposed in Colorado over the past three decades. These cases are summarized in Table 2 and case details are presented in Appendix A. Our analysis of these cases will be presented in Section V below.

We expanded on this sample of cases, 1980–1999, to include all cases in which the death penalty was sought. Identifying such cases is not an easy or straightforward task. Until 1995, prosecutors were not required to file a formal notice with the trial courts announcing their intention to seek the death penalty.¹³³ Therefore, we relied on newspaper accounts, interviews with attorneys, and published appellate court decisions to identify relevant cases. We did not include cases in which the prosecutor indicated that s/he was simply “considering” the death penalty; we included only cases where death was actually pursued by specific prosecutorial behaviors, even if only for a short time.¹³⁴

To identify relevant cases we began with a list maintained by the Office of the Colorado State Public Defender of 64 cases in which the

133. COLO. R. CRIM. P. 32.1(b).

134. Cases in which the death penalty was sought are not necessarily the worst of all Colorado homicide cases. In some cases where the death penalty was sought, the defendant may have instructed his or her attorney not to seek a plea bargain. In others, a plea bargain is arranged quickly, before the prosecutor announces that death will be sought. For example, in 2004, Ed Herrera was permitted to plead guilty to four counts of felony murder in exchange for four consecutive life sentences. In this case, all four victims were Hispanic. Howard Pankratz, *Killer Gets 4 Life Sentences, Son Receives 15-year Sentence for '03 Aggravated Robbery*, DENVER POST, Oct. 31, 2003, at C3. Similarly, Richard Paul White, who confessed to killing six people, was spared the death penalty and permitted to plead guilty in exchange for life prison sentences. Five of the victims were prostitutes. Mike McPhee, *Killer Given Two Life Terms*, DENVER POST, Nov. 30, 2004, at B1; Kirk Mitchell, *Serial Killer Given Third Life Sentence*, DENVER POST, Dec. 3, 2004, at B5. In 2005, Damian M. Arguello, a cocaine addict, was permitted to plead guilty to two counts of first-degree murder in exchange for a life sentence for killing his wife and 16-month-old son, despite the fact that Adams County District Attorney Don Quick called it “the most horrific” crime he had ever seen in his 18 years as a prosecutor. Hector Gutierrez, *Mom Tried Saving Child: Man Gets Life for Knifing Wife, Son*, ROCKY MOUNTAIN NEWS, Sept. 10, 2005, at A20. Again, the victims were Hispanic. Consistent with the argument that the status of the victim is associated with how vigorously a case is prosecuted, death was not formally pursued in any of the above cases.

death penalty was sought. The list included defendant's name, attorney's name, case number, and defendant's and victim's race and, for Hispanics, ethnicity.¹³⁵ Through searches of newspaper archives and interviews with several dozen attorneys who are experienced with death penalty litigation, we identified 46 additional cases in which the death penalty was sought. When completed, our research identified 110 cases in which the death penalty was sought in Colorado for homicides committed during the 20-year study period (where one case means one defendant against whom the death penalty was sought).¹³⁶ The death penalty was sought against 105 defendants; five defendants faced two death penalty prosecutions in separate cases. These cases are listed in Appendix B.

For each case we gathered relevant newspaper articles and published decisions by appellate courts, and in several cases we interviewed attorneys involved in the case. We also obtained information (such as the date of conviction) from the Colorado Department of Corrections for approximately two dozen inmates; these dates made it possible for us to find relevant newspaper articles. In cases where the race or ethnicity of the victim was unknown or unclear, we obtained information from death certificates on file with the Colorado Department of Public Health. In the end, we were able to obtain information on the defendant's and victim's race, ethnicity, and gender in all of the 110 cases.

135. Several cases on the list were missing information regarding race of victim, attorney's name and/or case number.

136. Our research identified several other cases where the death penalty was pursued in Colorado for homicides that occurred outside the 20-year time frame of our study. For example, O.D. Woolsey's jury returned a life sentence for a homicide from Pueblo in the 1970s, and David Eugene Prentiss was sentenced to life imprisonment after his case went to a penalty phase in 1976. Pat Bray, *Jury Fails to Decide on Prentiss Penalty*, DENVER POST, July 29, 1976, at B17.

The death penalty was also pursued for several cases where the murder occurred after Jan. 1, 2000: Thomas Lee Johnson (Routt County, May 2000), Anthony Jimenez (Teller County, Aug. 2000), Cruz Palomo (Morgan County, Oct. 2000), Edward Robert Brown (Denver, June 2001), Allen Bergerud (Weld County, Apr. 2002), Jimmie J. Vasquez (Adams County, Sept. 2002). None of these cases resulted in a death sentence. It was pursued and imposed on one defendant for a homicide committed after January 1, 2000: Edward Montour (Lincoln County, Oct. 2002). As of April 30, 2005, there were no cases in Colorado state courts in which the death penalty is being actively pursued.

Nor did we include the cases of Rudy and William Sablan (cousins), against whom the death penalty is being pursued for a murder in Florence that occurred on October 10, 1999. This murder occurred in a federal prison, and the death penalty is being pursued by federal, not state officials. Mike McPhee, *Pair May Face Death in Prison Slaying; Before Leaving Office Reno Paved Way for Capital Punishment in Grisly Killing*, DENVER POST, Jan. 27, 2001, at B4. As of April 2006, these cases had not been tried, and the death penalty was still being pursued.

B. Colorado Homicide Data

There are two principal sources for information on Colorado homicides: (1) police reports, compiled statewide by the Colorado Bureau of Investigation (“CBI”), and (2) information on death certificates, compiled by the Colorado Department of Public Health and Environment (“CDPHE”). Each includes a slightly different sample of homicides and each data set has its own advantages and disadvantages. Ultimately, we decided to use the second data source.

Police Data. All law enforcement agencies in the state compile information on various crimes and forward it to the CBI. For most crimes only minimal information is collected, but homicide is different. The CBI is charged with compiling “Supplemental Homicide Reports,” which are data on homicides submitted by local law enforcement agencies, tabulated by the CBI for statewide figures, and ultimately submitted by the CBI to the Federal Bureau of Investigation for its national reporting of offenses in its Uniform Crime Reports. Because the CBI obtains the homicide data from local police departments, the data come solely from police investigations. Homicides recorded by the CBI are defined as the “willful killing of another human being.” As such, negligent manslaughters are excluded. Among the variables measured by CBI are the race and sex of victims and defendants, the county and month of the homicide, and number of victims and offenders in each case.

Unfortunately, a major disadvantage of the CBI data is that ethnicity (such as Hispanic) is not registered; Hispanic victims are not separately identified and all are classified as white. This all but destroys the utility of the CBI data for studies where ethnicity is a central variable. Because Hispanic ethnicity is not distinguished, we turned to other sources of data on homicides.¹³⁷

Death Certificates. The CDPHE compiles data for all deaths in Colorado based on information recorded on death certificates. Here, the coroner determines the cause of death, not a law enforcement officer, and there will therefore be some minor differences in what the two agencies classify as a “homicide.” Unlike the CBI data, negligent homicides are included along with murders and non-negligent manslaughters. To define “homicide,” the CDPHE used the International Classification of Disease’s ninth revision (“ICD9”) definition of homicide for the years 1990 to 1998 and the International Classification of Disease’s tenth revision

137. The 2000 population of Colorado was 4,301,000, of whom 17.1 percent were of Hispanic or Latino ethnicity. See U.S. Census Bureau, State & County Quickfacts, Colorado, <http://quickfacts.census.gov/qfd/states/08000.html> (last visited Jan. 3, 2006).

sion (“ICD10”) for 1999. Under both the ICD9 and ICD10 classification systems, homicide is defined as an “injury purposely inflicted by other persons”¹³⁸ and includes injuries inflicted by another person with intent to injure or kill, by any means, but excludes injuries due to legal intervention,¹³⁹ and operations of war.¹⁴⁰

Because death certificates are the source of information, only the details for victims are provided, including gender, race and ethnicity. The CDPHE further records death data by county of residence of the deceased, county where the injury leading to death occurred, and (for years after 1989) county where the death occurred. For our analyses, we used “county where the injury leading to death” occurred. Note that these data on Colorado homicides are limited by a lack of information about the offender, including information on his or her prior record of criminal convictions. Nor do we have information that would allow us to classify the homicide along such continua as premeditation or heinousness.

The CDPHE homicide data were obtained directly from CDPHE statisticians in Denver.¹⁴¹ From 1980 to 1999, there were 3,993 deaths resulting from homicide, of which 1,137 victims (28.5 percent) were females. The CDPHE reports that 1,007 of the 3,993 homicides victimized Hispanics of any race during the twenty-year period (25 percent). There were 2,158 non-Hispanic white homicide victims (54 percent) and 709 non-Hispanic blacks (17.8 percent) among the homicide victims.

As would be expected, jurisdictions with larger populations and urban and suburban settings experienced higher numbers of homicides. Denver, the largest city (and county) in Colorado, is the location of the largest number of homicides: 1,754 or 43.9 percent of the state’s total. The next highest number of homicides occurred in El Paso County (Colorado Springs and vicinity), with 427 homicides, Arapahoe, with 269 homicides, and Adams, with 231. Nine counties had more than 100 homicides during the two decades, while 38 of Colorado’s 63 counties¹⁴² had 10 or fewer homicides.

138. NAT’L CTR. FOR HEALTH STATISTICS, CTRS. FOR DISEASE CONTROL & PREVENTION, MORTALITY DATA FROM THE NAT’L VITAL STATISTICS SYSTEM INT’L CLASSIFICATION OF DISEASES, TENTH REVISION, E960–E969, <http://www.cdc.gov/nchs/about/major/dvs/icd9des.htm>.

139. *Id.*, codes E970–E978.

140. *Id.*, codes E990–E999.

141. Information on how to purchase these data can be obtained from the Health Statistics Section, Colorado Department of Public Health and the Environment, 4300 Cherry Creek Drive South, Denver 80246.

142. On November 15, 2001, Broomfield became Colorado’s 64th county. Ryan Morgan, *Broomfield Enters Final Countdown: Midnight Marks New County’s Blastoff*, DENVER POST, Nov. 14, 2001, at B1.

V. RESULTS

A. *Death Sentences*

Our research identified 21 cases in which the death penalty was imposed in Colorado, 1975–2005. Of these, as of the end of 2005, one inmate was executed in Colorado, one was executed in Texas,¹⁴³ and two others remain on death row. Table 2 shows that seven of the death sentences were imposed for murders in the 1970s, eight for murders in the 1980s, five for murders in the 1990s, and one for a murder after January 1, 2000. Jefferson County accounted for five death sentences and Weld County had four; Denver, the largest city and county in the state, had only one.

Overall, 11 of the 21 defendants (52 percent) were white, five were black, four were Hispanic, and one was Asian. No women were sentenced to death, continuing a pattern also found in Colorado prior to 1972.¹⁴⁴ Eighteen of the 21 people sentenced to death were convicted of killing non-Hispanic white victims (85.7 percent). Two of the death penalty cases involved defendants convicted of killing Hispanic victims, and there was one case in which a white defendant was sentenced to death for killing an African American.

The latter case, in which Scott Raymer (white) was sentenced to death in 1977 for the murder of gas station attendant Doris Hargrove (black), is unusual.¹⁴⁵ In 1989, Radelet examined the records of some 16,000 executions in the United States, and identified only 30 cases in which white people were executed for killing blacks.¹⁴⁶ Our searches of the *Denver Post* and *Rocky Mountain News* (the two principal Denver-based newspapers) for dates around the time of the homicide and the trial revealed no articles that mentioned the races of either Raymer or of Hargrove, and no pictures of either. We learned about Hargrove's race only when we tracked down one of Raymer's defense attorneys, and confirmed her race with her death certificate. Yet, it turns out that even though Raymer is white and the victim was black, the death sentence was

143. This inmate was Steven Paul Morin, who was tried and sentenced to death in Colorado in 1984 even though he was already under two death sentences in Texas. Seven months after being sentenced to death in Colorado, Morin was executed in Texas. The Colorado trial was not much of a contest, as Morin refused to talk with his two public defenders and failed to mount a defense. Kit Miniclier, *Morin Sentenced to Death in Colorado's Gas Chamber*, DENVER POST, Aug. 14, 1984, at A7.

144. Radelet, *supra* note 20, at 891.

145. See app. A, case No. 6.

146. Michael L. Radelet, *Executions of Whites for Crimes Against Blacks: Exceptions to the Rule?*, 30 SOC. Q. 529, 532 (1989).

2006] DEATH SENTENCING IN COLORADO (1980–1999) 571

not especially unusual: Raymer also killed a second gas station attendant, who was white. Although he was permitted to plead guilty to this murder in exchange for a life sentence, undoubtedly the reason why the death sentence was given in the Hargrove case is because Raymer also killed another person.¹⁴⁷

Table 2: Post-Furman Death Sentences in Colorado (N=21)

I. BEFORE STUDY PERIOD

Defendant's Name	Offense Date	Sentence Date	County	D's Race	V's Race	V's Gender
Dean Wildermuth	01/18/75	11/06/75	Adams	W	W	F
Michael Corbett	06/24/75	05/28/76	El Paso	B	W	M
Freddie Glenn	07/01/75	05/07/76	El Paso	B	W	F
Kenneth H. Botham	08/23/75	01/25/77	Mesa	W	W	F
Ronald Ferrell	02/17/76	12/10/76	Teller	W	W	M
Scott Elliott Raymer	12/20/76	06/28/77	Jefferson	W	B	F
Ricky Dillon	08/14/77	09/08/78	El Paso	B	W	M

II. DURING STUDY PERIOD

Defendant's Name	Offense Date	Sentence Date	County	D's Race	V's Race	V's Gender
Edgar Duree	11/29/80	09/30/81	Weld	W	W	M
Steven Morin	11/06/81	08/13/84	Jefferson	W	W	F
Johnnie Arguello	12/03/81	07/22/82	Weld	H	W	M
Richard Drake	12/16/82	01/16/84	Mesa	W	W	F
Frank Rodriguez	11/14/84	12/17/86	Denver	H	W	F
Gary Davis	07/21/86	07/23/87	Adams	W	W	F
John O'Neill	02/03/87	11/18/87	Jefferson	W	H	M
Ron White	03/26/88*	05/16/91	Pueblo	W	W	M
Nathan Dunlap	12/14/93	05/17/96	Arapahoe	B	W	3F & 1M
Robert Harlan	02/12/94	09/05/95	Adams	B	W	F
George Woldt	04/29/97	09/06/00	El Paso	A	W	F
Francisco Martinez	05/31/97	05/27/99	Jefferson	H	H	F
William Cody Neal	06/07/98	09/29/99	Jefferson	W	W	3F

* Date body discovered

III. AFTER STUDY PERIOD

Defendant's Name	Offense Date	Sentence Date	County	D's Race	V's Race	V's Gender
Edward Montour	10/18/02	02/27/03	Douglas	H	W	M

147. Similarly, in 1984 James Dupree Henry (black) was executed in Florida for the murder of an African American victim. Because defendants are rarely executed for killing blacks, this was an anomaly. However, analysis of the newspaper coverage in the case showed that far more attention was given to a white police officer who was slightly wounded when Henry was apprehended than to the black murder victim. See Michael L. Radelet & Michael Mello, *Executing Those Who Kill Blacks: An Unusual Case Study*, 37 MERCER L. REV. 911 (1986).

B. Cases Where Death Penalty Sought

Next, we focus on cases from 1980 through 1999, where we obtained information not only on those sentenced to death, but on all 110 defendants against whom the death penalty was sought.¹⁴⁸ The 110 cases are listed in Appendix B. Among the 110 cases are five cases where the death penalty was pursued for female defendants.¹⁴⁹ In all five, the death penalty was also sought against a male codefendant. In two of the five cases, death sentences were sought against the same woman for two separate murders, so overall the death penalty was sought against three women in five cases. One woman pled guilty to first-degree murder in both her cases. In the other three cases (two defendants), the final conviction was conspiracy. Thus, in 60 percent of the cases where the death penalty was sought against women, the defendants were ultimately not convicted of any criminal homicide.

Overall, in 30 of the 110 cases (27.3 percent), the defendant against whom the death sentence was sought ultimately was not convicted of first-degree murder. In 11 cases, the defendant pled not guilty to first-degree murder and was acquitted, although in several of these the defendant was convicted of conspiracy or being an accessory,¹⁵⁰ criminal solicitation,¹⁵¹ a federal weapons charge,¹⁵² or burglary/aggravated robbery.¹⁵³ Three of the 11 were found not guilty of any charges.¹⁵⁴

In five other cases, the defendant against whom the death penalty had originally been sought avoided a trial by pleading guilty to aggravated robbery¹⁵⁵ or conspiracy.¹⁵⁶ In 14 other cases the defendant either pled guilty to second-degree murder¹⁵⁷ or, after being acquitted of first-degree murder, was convicted of second-degree murder by a jury.¹⁵⁸

The 110 defendants were accused of killing a total of 125 victims. Table 3 shows the number of defendants and victims in these cases.

148. See app. B.

149. See app. B, case Nos. 22, 31, 34, 36, and 57.

150. See app. B, case Nos. 18, 34, 67, 104, and 105.

151. See app. B, case No. 109.

152. See app. B, case No. 77.

153. See app. B, case No. 65.

154. See app. B, case Nos. 33, 70, 96.

155. See app. B, case No. 20.

156. See app. B, case Nos. 31, 36, 62, and 110.

157. See app. B, case Nos. 1, 4, 19, 21, 26, 35, 41, 69, 75, 79, 88, and 103.

158. See app. B, case Nos. 10 and 76.

Table 3: Colorado Death Penalty Cases, Number of Defendants¹⁵⁹ and Victims¹⁶⁰

Defendant / Victim Ratio	# Cases/Defendants	# Victims
One defendant, one victim	50	50
One defendant, two victims	11	22
One defendant, three victims	6	18
One defendant, four victims	3	12
Two defendants, one victim	32	16
Two defendants, two victims	2	2
Three defendants, two victims	3	2
Three defendants, three victims	3	3
TOTAL	110 cases/defendants	125 victims

The data reveal that when it comes to death penalty prosecutions in Colorado, many are called but few are chosen. Overall, 37 of the 110 cases went to a penalty phase, but the death penalty was rejected by the sentencing authority (judge or jury) in almost two-thirds of the cases (N=24). These cases are listed in Table 4. Death sentences were ultimately imposed on 13 of the 110 defendants (11.8 percent).¹⁶¹

159. By “defendant” in this Table, we include only defendants against whom the death penalty was sought. For example, if three defendants were charged with killing one victim, but the death penalty was sought against only one, we count this as “one defendant and one victim.”

160. We define “victim” as homicide victim(s).

161. Death sentences were imposed on 1/3 of the Asian defendants (33.3 percent), 3/18 of the Hispanic defendants (16.7 percent), 7/60 of the white defendants (11.7 percent), 2/29 of the black defendants (6.9 percent). With such low numbers (only 13 death sentences), these percentage differences are not statistically significant.

**Table 4: Cases that Went to Penalty Phase for Homicides
1980–1999 Where Death Penalty Was Rejected (N=24)**

No.*	Defendant	Date	County
2	Robert Williams	09/11/80	Douglas
3	Roger Cullen	09/21/80	El Paso
6	James Manners	11/29/80	Weld
14	Ross Thomas	03/01/82	Arapahoe
16	Vernon Templeman	12/06/82	El Paso
25	Charles Smith	11/12/83	Yuma
29	Chris Rodriguez	11/14/84	Denver
42	Richard Borrego	06/18/86	Jefferson
43	Anthony Lucero	06/18/86	Jefferson
44	Phillip Andrade	06/28/86	Weld
48	Ricky Saathoff	01/18/87	Adams
50	Michael Tenneson	05/20/87	Denver
52	Timothy Vialpando	09/06/87	Denver
53	Marvin Walker	09/18/87	Adams
60	Kevin Fears	06/06/89	Denver
63	Frank Orona	09/26/89	El Paso
68	Allen Thomas	02/04/91	Adams
85	Albert Petrosky	04/28/95	Jefferson
90	Lucas Salmon	04/29/97	El Paso
91	Robert Riggan	05/16/97	Jefferson
93	Danny Martinez	05/31/97	Jefferson
94	Jacques Richardson	06/18/97	Denver
100	Dante Owens	09/10/98	Arapahoe
107	Donta Page	02/24/99	Denver

* Numbers refer to case numbers used in Appendix B

*C. Comparisons: Death Penalty Cases With All Colorado
Homicides*

Table 5 lists the counties in which Colorado homicides occurred from 1980 to 1999 where the death penalty was sought at least once. The number of homicides occurring in each county (as measured by death certificates) is compared to the number of times the death penalty was sought. These results show that Denver County had the largest number of homicides (1,754) and death penalty cases (19); death was pursued in 1.1 percent of the cases. Additional data (derived from data presented in Appendix B) show that from the 1980s to the 1990s, Pueblo

2006] DEATH SENTENCING IN COLORADO (1980–1999) 575

and Weld counties experienced the biggest drop in death penalty cases (from 6 to 1 and 4 to 0 respectively), whereas the biggest increase was in Jefferson County, which went from 6 death penalty prosecutions to 9.

**Table 5: Colorado Homicides and Death Penalty Cases
by County of Occurrence, 1980–1999**

County	Homicides	Death Cases	Ratio
Denver	1,754	19	.011
El Paso	427	12	.028
Arapahoe	269	12	.045
Adams	231	16	.069
Jefferson	191	15	.079
Pueblo	180	7	.039
Weld	124	4	.032
Mesa	116	2	.017
Boulder	104	2	.019
Larimer	92	1	.011
Douglas	34	2	.059
Garfield	25	1	.040
Moffat	14	1	.071
Delta	14	1	.071
Montrose	13	1	.077
Logan	9	2	.222
Summit	9	1	.111
Gilpin	8	4	.500
Routt	8	1	.125
Pitkin	6	1	.167
Lincoln	5	1	.200
Grand	5	1	.200
Yuma	3	1	.333
Kit Cars.	2	2	1
Other	350	0	—
TOTAL	3,993	110	.028

Because proportions can vary considerably if the number of homicides (the denominator) is small, Table 6 presents data on only those counties that experienced more than 100 homicides during the study period, rank-ordering them in terms of the probability that a death sentence will be sought. Of the counties with more than 100 homicides, Jefferson County, with 191 homicides and 15 death penalty cases, represented the highest proportion of capital cases per homicides at 7.9 percent. The

state average, based on 3,993 homicides and 110 total death cases, was 2.8 percent. Jefferson County sought the death penalty nearly three times the state average and seven times the capital punishment prosecution rate of Denver County. Though not as proportionately frequent as Jefferson County, the death penalty was also sought at a higher rate than the state average in Adams, Arapahoe, Pueblo, and Weld counties. El Paso County sought the death penalty in 2.8 percent of its cases, which is a rate equivalent to the statewide average.

Table 6: *Ratio of Death Penalty Cases to Total Homicides in Counties with More than 100 Homicides, 1980–1999*

County	Ratio
Jefferson	.079
Adams	.069
Arapahoe	.045
Pueblo	.039
Weld	.032
<i>State Average</i>	<i>.028</i>
El Paso	.028
Boulder	.019
Mesa	.017
Denver	.011

Table 7 presents information on the race, ethnicity, and gender of all Colorado homicide victims during the twenty-year study period and compares them to the victims in the cases where the death penalty was sought. To make these comparisons, some simple statistical adjustments were necessary. Throughout this paper, the unit of analysis has been a death penalty case, defined as one defendant in one case against whom a death sentence is sought. As we saw in Table 3, however, these 110 people were accused in their death penalty cases of killing 125 people. While cases with one victim present no problem in determining the race, ethnicity, and gender of the victim, cases with multiple victims do present a challenge.

To solve this problem, we statistically adjusted each multiple-victim case so that each of the 110 defendants would have one victim. If the defendant was suspected of killing two black men, for example, the statistical adjustment was simple: we counted one black male as the victim. Similarly, if there were two defendants who were charged with a double

murder that victimized one male and one female, we counted the first defendant as having a male victim and the second with a female victim.¹⁶² But if there was one defendant with one male and one female victim, we counted the case as .5 male victims and .5 female victims. Similarly, if the defendant was accused of killing three people—say one black, one white, and one Hispanic—we counted his victim as .33 black, .33 white, and .33 Hispanic. Thus, for our comparisons with all Colorado homicide victims, each death penalty case was adjusted so that we could tally 110 defendants and 110 victims.

Table 7: Race, Ethnicity, and Gender of Homicide Victims, Colorado, 1980–1999
(All Colorado Homicides and All Death Penalty Cases)

Victim Characteristics	Number of Homicides	Percentage of Total Homicides	Death Penalty Cases	Percentage of Total Death Penalty Cases	Percentage Where Death Penalty Sought
White Female	716	17.9	38	34.5	5.3
White Male	1,442	36.1	52	47.3	3.6
Black Female	157	3.9	3	2.7	1.9
Black Male	552	13.8	4	3.6	0.7
Hispanic Female	221	5.5	4	3.6	1.8
Hispanic Male	786	19.7	8	7.3	1.0
Native American Female	22	0.6	0	0	0
Native American Male	43	1.1	0	0	0
Asian Female	20	0.5	1	0.9	5.0
Asian Male	30	0.8	0	0	0
Other/Unknown Female	1	0	0	0	0
Other/Unknown Male	3	0.1	0	0	0
TOTAL	3,993		110		2.8

The data presented in Table 7 indicate that the death penalty is sought for defendants who kill white females at a rate much higher than it is sought for any other victims. White females, who account for only 17.9 percent of all homicide victims, make up 34.5 percent of victims in death penalty cases. Thus, death sentences are pursued against those who kill white women at almost twice the rate as their rate of homicide victimization. Similarly, while white male victims made up 36.1 percent of the state's homicide victims, death was sought in 47.3 percent of the cases involving white male victims. In contrast, black males accounted for 13.8 percent of all homicide victims and only 3.6 percent of victims

162. Similarly, three of our 110 cases involve three defendants charged with killing three victims: a black male, a black female, and a white male. We assigned one of these victims to each of the defendants.

in cases where death was sought. Similarly, Hispanic males accounted for 19.7 percent of all victims and only 7.3 percent of capital case victims. Hispanic females accounted for 5.5 percent of all victims and 3.6 percent of capital case victims. Similarly, black females accounted for 3.9 percent of total homicide victims and only 2.7 percent of victims in cases where death was sought. Among all 12 categories of gender, race and ethnicity of homicide victims presented in Table 1, in only two categories is the death penalty pursued at rates higher than the category's homicide victimization rates: for white men and white women.

Table 8: Race and Ethnicity of Homicide Victims and Death Penalty Cases, Colorado, 1980–1999

Victim Characteristics	Number of Homicides	Percentage of Total Homicides	Death Penalty Cases	Percentage of Total Death Penalty Cases	Percentage Where Death Penalty Sought
White non-Hispanic	2,158	54.0	90	81.8	4.2
White Hispanic	1,007	25.2	12	10.9	1.2
Black (non-Hispanic)	709	17.8	7	6.4	1.0
Native American (non-Hispanic)	65	1.6	0	0	0
Asian (non-Hispanic)	50	1.3	1	0.9	2.0
Other/unknown	4	0.1	0	0	0
TOTAL	3,993		110		2.8

Chi-Square = 33.85 with 5 degrees of freedom, $p < .001$

Table 8 presents information solely on the race and ethnicity of homicide victims. In comparing the race and ethnicity of victims in cases where the death penalty was sought to all homicides between 1980 and 1999, significant disparities are apparent. The data indicate that prosecutors are far more likely to seek the death penalty in cases where defendants (of any race or ethnicity) kill white victims than in other homicide cases. *While non-Hispanic white victims accounted for 54 percent of all homicide victims from 1980 to 1999, they account for 81.8 percent of victims in cases where the death penalty was sought.* In the 13 cases where death was imposed, 11 (85 percent) involved white victims. In homicides involving black and Hispanic victims, the death penalty was sought at much lower rates. Black victims accounted for nearly 18 percent of total homicide victims and only 7 percent of victims in cases where the death penalty was sought. Similarly, Hispanic victims accounted for 25.2 percent of total homicide victims and only 10.9 percent of victims in cases where the death penalty was sought. The data for Native Americans and Asian victims are less conclusive because of the relatively small number of homicides in each of these groups. However, no

death sentences were sought in the 65 cases in which Native Americans were homicide victims (1.6 percent of the total of all homicides), and the death penalty was sought in only 1 of the 50 cases in which Asians were victimized by homicides.

Table 8 shows that the probability the death penalty is sought when whites are killed is .0417 ($90 \div 2,158$). The death penalty is sought in 1 percent (.0099) of the cases where blacks are murdered ($7 \div 709$). *Thus, the probability the death penalty will be sought for a Colorado homicide is 4.2 times higher (.0417 \div .0099) for those who kill whites than for those who kill blacks.* Similarly, after omitting non-Hispanic whites from Table 8 we see that the death penalty was sought in .0109 percent of the cases ($20 \div 1,835$) where non-whites are killed. Comparing this to the proportion of cases in which the death penalty was pursued for the deaths of non-Hispanic whites (.0417), we can see that the probability that the death penalty is pursued is 3.8 times higher in cases where non-Hispanic whites are killed than in all other homicide cases.

We also calculated a measure of association and statistical significance to calculate the probability that the patterns observed in Table 8 could be obtained by chance if indeed death sentencing is not associated with race and ethnicity. The statistic we used is “Chi-Square,” a basic statistical test that is among the most common statistical measures in the social sciences. The data in Table 8 result in a Chi-Square of 33.85, and the probability of obtaining a Chi-Square this high, if indeed there is no association between race and ethnicity and death sentencing, is less than 1 out of 1,000.

Table 9: Gender of Homicide Victims and Death Penalty Cases, Colorado, 1980–1999

Victim Gender	Number of Homicides	Percentage of Total Homicides	Death Penalty Cases	Percentage of Total Death Penalty Cases	Percentage Where Death Penalty Sought
Female	1,137	28.5	46	41.8	4.1
Male	2,856	71.5	64	58.2	2.2
TOTAL	3,993		110		2.8

Chi-Square = 9.29 with one degree of freedom, $p < .01$

Table 9 focuses attention on the gender of homicide victims. Here again we use data from the CDPHE to compare the number of total victims to capital case victims from 1980 to 1999. While males make up 71.5 percent of total homicide victims, they account for only 58.2 percent of victims in cases where the death penalty was sought. Females account

for 28.5 percent of all homicide victims and 41.8 percent of victims in cases where the death penalty was sought. The probability of a death sentence prosecution for those who kill females is .0405 ($46 \div 1,137$), and for those who kill males it is .0224 ($64 \div 2,856$). Thus, the probability of the death penalty being sought is 1.81 times ($.0405 \div .0224$) higher for those who kill females than for those who kill males. The Chi-Square of 9.29 indicates that the probability that these patterns can occur by chance is less than 1 out of 100.

CONCLUSION

The above data document a pattern of what can only be considered, from the perspective of the state, a poor record of success over the past three decades in death penalty prosecutions. Both friend and foe of capital punishment will agree that with only one inmate executed and two others on death row whose ultimate fates have not yet been decided, those who champion the death penalty in Colorado have, in case after case, been unable to achieve their goal and deliver on their promises to the families of the victims. When focusing on the two decades between 1980 and 1999, we found there were 110 death penalty prosecutions, and the state ended up with one execution¹⁶³ and one inmate on death row.¹⁶⁴ In ten percent of the cases where the death penalty was initially sought ($n=11$), the defendant was ultimately acquitted of all homicide charges. In over one-quarter of the cases ($n=30$), prosecutors failed to win a conviction for first-degree murder against the defendant whom they attempted to send to death row. In almost two-thirds of the 37 cases that went to penalty phase for murders committed between 1980 and 1999 ($n=24$), the sentencing authority rejected the death penalty.¹⁶⁵ This is a low record of success that few businesses in the private sector could sustain.

These failed attempts to make use of Colorado's lethal injection chamber have cost Colorado taxpayers unknown millions of dollars more than would have been spent had capital punishment not been available in the state.¹⁶⁶ With almost 4,000 homicides in the state from 1980–1999

163. See case of Gary Davis, app. A.

164. See case of Nathan Dunlap, app. A. The other inmate currently on Colorado's death row, Edward Montour (see app. A), was convicted of a murder that occurred after our study ended on December 31, 1999.

165. See tbl.4, *supra*.

166. Several recent studies have documented the high costs associated with death penalty prosecutions, and no studies or researchers in recent years have contradicted these results. The Death Penalty Information Center maintains the most comprehensive list of these studies. See DEATH PENALTY INFORMATION CENTER, COSTS OF THE DEATH PENALTY, <http://www.death>

and 110 death penalty prosecutions (99 percent of which were not successful), one might reasonably argue that the resources that have been (and are) used to prosecute capital cases could better be spent on programs that have legitimate promise in reducing criminal violence, improving the rates of capture and conviction of homicide suspects,¹⁶⁷ and assisting families of homicide victims. The data raise questions about whether whatever (subjective) benefits the death penalty might have in the eyes of its supporters are worth the (objective) high fiscal costs.

Even though Colorado prosecutors appear to be quite selective in pursuing the death penalty, the evidence suggests that death penalty decisions are not being made equitably. Because death sentences are infrequently imposed in Colorado, this study focused less on the jury's or judge's decision to *impose* death and more on the prosecutorial decisions to *seek* death. The data show that prosecutorial decisions to seek death sentences in Colorado, 1980–1999, significantly vary across the state and are strongly correlated with the race, ethnicity, and gender of the homicide victim. If the death penalty is supposed to help families of homicide victims, then, at best, it offers that “help” far more often to families of white victims than to families of other homicide victims.

This does not mean that the patterns result from intentional or conscious racial discrimination by individual prosecutors. Instead, the patterns no doubt reflect more subtle biases about what types of murders are seen as the “worst” and what types of murders can be adjudicated with plea bargains. While there are no data available about the racial or ethnic characteristics of the prosecuting attorneys in Colorado who made the 110 decisions to seek death, it is likely that the overwhelming majority of these prosecutors are non-Hispanic white males.

The results from this study are strikingly consistent with findings from similar research conducted in Georgia, Florida, Maryland, Nebraska, Illinois, North Carolina, California, and several other states.¹⁶⁸ Unlike the present study, which was completed without any external funding, most of the more comprehensive studies of race and death sentencing reviewed herein were possible only because various state agen-

penaltyinfo.org/article.php?did=108&scid=7 (last visited Jan. 3, 2006).

167. Almost 30 percent of Colorado homicides are unsolved. Should state legislators be interested in increasing the assistance the state renders to families of homicide victims, increasing the resources available to local police departments to help them solve more homicides would be a top priority. One Colorado group, “Families of Homicide Victims and Missing Persons,” is dedicated to such goals. See www.unresolvedhomicides.org (last visited Jan. 7, 2006). One of the authors of the present study, Stephanie Hindson, won the “volunteer of the year” award from this group in 2004; a second, Michael Radelet, is a member of their Board of Directors.

168. See *supra* notes 75–115 and accompanying text.

cies funded them. The Florida Supreme Court and the states of Illinois, Maryland, and Nebraska all funded research projects that were designed to study consistency in death sentencing. Should such funding become available in Colorado, future researchers will want to compile detailed information on every homicide, including potentially aggravating and mitigating circumstances, as well as the record of prior arrests by the suspected offender. While studies in other states indicate that the racial disparities persist (or even increase) when these aggravating and mitigating circumstances are considered, examining the case-specific details in Colorado will help shed more light on how the process works.

As it stands, the evidence at our disposal lends support to the assertion that the death penalty in Colorado allows politicians and prosecutors to spend millions of dollars trying to convince the public that they are tough on crime, but, in the end, it is a false promise that delivers virtually no tangible benefits. In addition, given the strong correlation between the pursuit of the death penalty and the race, ethnicity, and gender of the homicide victim, it is clear that even at best, the death penalty is a punishment that is not sought equitably across different categories of victims. It is a punishment that is pursued in the name of “justice” but with its own internal injustices. In short, the evidence shows that in deciding who should live and who should die, Colorado prosecutors are making godlike decisions without godlike skills.

APPENDIX A
COLORADO DEATH SENTENCES:
JANUARY 1, 1975–DECEMBER 31, 2005

1. DEAN LEWIS WILDERMUTH (a.k.a. Shane McKnight). January 18, 1975. Convicted in the stabbing death of Thelma C. Wrench in Northglenn, whom he had met a few days earlier in a local bar.¹⁶⁹ He was sentenced to death after the jury found that the murder was committed in “a heinous, cruel or depraved manner,” an aggravating circumstance that made a death sentence mandatory.¹⁷⁰ In November 1975, prosecutors asked the trial court to vacate the death sentence because the trial judge had improperly refused requests by defense attorneys to question prospective jurors about their feelings about capital punishment.¹⁷¹

2. MICHAEL CORBETT. June 24, 1975. A former Ft. Carson soldier, Corbett was sentenced to death for stabbing and killing Winford Proffitt.¹⁷² A codefendant, Freddie Glenn (see case No. 3 below) was sentenced to life imprisonment for his role in the murder. Corbett also pled guilty and received life sentences for killing a cook, Daniel H. Van Lone, during a robbery at a restaurant, and for killing a friend, Winslow Douglas Watson.¹⁷³ The death sentence was vacated in 1978 when the state supreme court found the state’s death penalty statute was unconstitutional.¹⁷⁴

3. FREDDIE GLENN. July 1, 1975. Sentenced to death for the murder of an 18-year-old waitress, Karen Grammer.¹⁷⁵ Grammer was kidnapped when she spotted Glenn (a Ft. Carson soldier) and two accomplices about to rob a Red Lobster restaurant. She was taken to an apartment where all three men raped her, and then driven to an alley

169. *Woman Slain in Northglenn*, DENVER POST, Jan. 20, 1975, at 4.

170. Jim Kirksey, *Adams Slayer to Face Death; First Since '67*, DENVER POST, July 19, 1975, at 1.

171. Fred Brown, *Challenge to State Death Penalty Dropped*, DENVER POST, Nov. 25, 1976, at 19.

172. *Impassive Corbett Receives Death for Stabbing Proffitt*, GAZETTE TELEGRAPH (Colorado Springs), April 27, 1976, at 11; *Michae (sic) Corbett Is Sentenced to Die*, GAZETTE TELEGRAPH (Colorado Springs), May 30, 1976, at 16G.

173. *State v. Corbett*, 713 P.2d 1337 (Colo. 1985); *Western Empire: Parole Board Denies Killer*, DENVER POST, Apr. 18, 1996, at B4. Freddie Glenn (q.v.) was sentenced to life for both the Proffitt and Van Lone murders.

174. *People v. District Court*, 586 P.2d 31 (Colo. 1978); Eric Lawlor, *Mom Expresses Fear for Life of Inmate*, ROCKY MOUNTAIN NEWS, Oct. 24, 1978, at 5.

175. *Glenn Is Found Guilty of Murder; Jury Deliberated 2½ Hours Tuesday*, GAZETTE TELEGRAPH (Colorado Springs), Mar. 17, 1976, at 11; *Glenn Sentenced to Death*, GAZETTE TELEGRAPH (Colorado Springs), Mar. 18, 1976, at 1; *Glenn Sentenced to Death For Killing of Young Girl*, GAZETTE TELEGRAPH (Colorado Springs), May 8, 1976, at 1.

where Glenn slit her throat.¹⁷⁶ Prior to his conviction for the Grammer murder, Glenn was sentenced to life imprisonment for the June 1975 murder of Daniel H. Van Lone.¹⁷⁷ In October 1975, after a change of venue to Boulder, he pled guilty to and was sentenced to life imprisonment for the murder of Winford Proffitt, a murder that sent his co-defendant, Michael Corbett (case No. 2 above) to death row.¹⁷⁸ The death sentence was vacated in 1978 when the state supreme court found the state's death penalty statute was unconstitutional.¹⁷⁹

4. KENNETH H. BOTHAM, JR. August 23, 1975. Sentenced to death for killing his wife, Patricia, in Grand Junction.¹⁸⁰ He was also convicted on three counts of second-degree murder for killing a neighbor and her two children.¹⁸¹ The two women were suffocated and the children were both shot, and the bodies of all four were tied to scrap railroad iron and thrown into a river, where they were found one month later. The death sentence was vacated in 1978 when the state supreme court found the state's death penalty statute was unconstitutional.¹⁸² Botham won a new trial in 1981 because of "the failure of the trial judge to recuse himself, coupled with the failure to grant a change of venue, and erroneous and prejudicial evidentiary rulings, require[d] that a new trial be granted."¹⁸³ At retrial (after a change of venue to Golden) he was again convicted¹⁸⁴ and sentenced to life imprisonment (with a minimum of 70 years before parole eligibility).¹⁸⁵

5. RONALD LEE FERRELL. February 17, 1976. Convicted of killing Andrew J. Fullbright, a partner in various drug transactions, because he had alerted another drug dealer that Ferrell and two companions planned to rob him.¹⁸⁶ The conviction was affirmed on appeal.¹⁸⁷ The death

176. Jim Gibney, *Death Penalty in Springs Slaying*, DENVER POST, Mar. 18, 1976, at 27; Glenn Sentenced to Death For Killing of Young Girl, GAZETTE TELEGRAPH (Colorado Springs), May 8, 1976, at 1.

177. *Carson Soldier is Convicted*, ROCKY MOUNTAIN NEWS, Feb. 15, 1976, at 46.

178. *Ex-Carson GI Gets Life In 3rd Murder Conviction*, DENVER POST, Oct. 15, 1976, at 17.

179. *People v. District Court*, 586 P.2d 31 (Colo. 1978); Eric Lawlor, *supra* note 174.

180. Rich Mauer, *Botham Jurors Decide on Death*, DENVER POST, Dec. 15, 1976, at 1; Rich Mauer, *Botham Sentenced to Die; Appeal Likely*, DENVER POST, Jan. 26, 1977, at 3.

181. *Botham Convicted of Slayings*, ROCKY MOUNTAIN NEWS, Dec. 13, 1976, at 5.

182. *People v. District Court*, 586 P.2d 31 (Colo. 1978); Eric Lawlor, *supra* note 174.

183. *People v. Botham*, 629 P.2d 589, 603 (Colo. 1981).

184. Philip Reed, *Botham's Retrial in Killings Ends in Conviction*, ROCKY MOUNTAIN NEWS, Jan. 23, 1982, at 12.

185. Philip Reed, *Botham Gets 70 Years in Slayings*, ROCKY MOUNTAIN NEWS, Feb. 17, 1982, at 8.

186. Molly R. Parrish, *Ferrell Is Found Guilty of Murder*, GAZETTE TELEGRAPH (Colorado Springs), Oct. 9, 1976, at 11; Molly R. Parrish, *Ferrell Is Given Death Sentence*,

sentence was vacated in 1978 when the state supreme court found the state's death penalty statute was unconstitutional.¹⁸⁸

6. SCOTT ELLIOTT RAYMER. December 20, 1976. Raymer (white) was convicted and sentenced to death for killing Doris Hargrove, an African-American attendant at a Lakewood gas station who was shot during a robbery.¹⁸⁹ A second participant pled guilty to first-degree murder for his role in the killing and a third defendant pled guilty to manslaughter. Two weeks after being sentenced to death, Raymer pled guilty to felony murder and was sentenced to life imprisonment for killing a second gas station attendant (white) in Denver approximately 20 minutes after the first homicide.¹⁹⁰ The death sentence was vacated in 1978 when the state supreme court found the state's death penalty statute was unconstitutional.¹⁹¹

7. RICKY DILLON. August 14, 1977. Convicted and sentenced to death for bludgeoning to death Carl Taylor, who was killed as he slept in a moving van in the parking lot of a Colorado Springs apartment complex. The state contended that Dillon was among a group of soldiers from nearby Ft. Carson who had decided to burglarize the van.¹⁹² No physical evidence linked Dillon to the murder; the only evidence against him came from self-confessed participants in the crime who implicated him. The death sentence was vacated in 1978 when the Colorado Supreme Court found the state's death penalty statute was unconstitutional.¹⁹³ Dillon's initial appeal was denied.¹⁹⁴ However, in 1987, a new trial was ordered by the Colorado Court of Appeals because of ineffective assistance of counsel.¹⁹⁵

8. EDGAR LEE DUREE. November 29, 1980. Convicted (with James Manners) of killing Gary Statler (a member of the family that owned the Statler Hotel Chain). The key witness at trial was Duree's son, Roger Baldwin, who testified that he had arranged a sexual encounter between Manners, Duree, and Statler at a Denver motel. However, it

GAZETTE TELEGRAPH (Colorado Springs), Oct. 10, 1976, at 4; *Murderer Will Die March 13-19*, GAZETTE TELEGRAPH (Colorado Springs), Dec. 11, 1976, at 1.

187. *People v. Ferrell*, 613 P.2d 324 (Colo. 1980).

188. *People v. District Court*, 586 P.2d 31 (Colo. 1978); Eric Lawlor, *supra* note 174.

189. Jerry V. Williams, *Raymer Given Death Penalty*, DENVER POST, June 29, 1977, at 21.

190. *Condemned Killer Gets Life Term*, ROCKY MOUNTAIN NEWS, July 8, 1977, at 29.

191. *People v. District Court*, 586 P.2d 31 (Colo. 1978); Eric Lawlor, *supra* note 174.

192. Joyce Trent, *Dillon Gets Death Penalty*, GAZETTE TELEGRAPH (Colorado Springs), June 27, 1978, at 1; Joyce Trent, *Dillon's Execution Set During December*, GAZETTE TELEGRAPH (Colorado Springs), Sept. 9, 1978, at 1.

193. *People v. District Court*, 586 P.2d 31 (Colo. 1978); Eric Lawlor, *supra* note 174.

194. *People v. Dillon*, 633 P.2d 504 (Colo. 1981).

195. *People v. Dillon*, 739 P.2d 919 (Colo. 1987).

was a trap, and Statler was forced to write checks until his bank account was exhausted, whereupon he was murdered. The jury first recommended a death sentence for Duree, but five jurors later wrote to the judge asking that Duree instead be sentenced to life imprisonment.¹⁹⁶ In 1984 the death sentence was vacated by the Colorado Supreme Court because the jury had not been told that an inability to agree unanimously on a death sentence meant that the defendant should be sentenced to life imprisonment.¹⁹⁷

9. STEVEN PETER MORIN. November 6, 1981. Convicted and sentenced to death for the kidnapping and murder of Sheila Ann Whalen, a Denver waitress, who was found strangled to death in a motel room. Before his trial, he had already been given two death sentences for murders in Texas, and he was suspected of additional murders in several other states. At the trial in Colorado (in Golden), Morin refused to cooperate with his public defenders and he offered no defense.¹⁹⁸ No appeal was taken. On March 13, 1985, seven months after receiving the Colorado death sentence, Morin was executed in Texas.¹⁹⁹

10. JOHNNIE ARGUELLO. December 3, 1981. Sentenced to death for the murder of a Greeley gas station attendant, Rodney Russell (a student at the University of Northern Colorado), who was beaten to death with a hammer during a robbery.²⁰⁰ In January 1983 his initial appeal

196. Frank Moya & Brad Martisius, *Trial in Greeley Will Be Test of Colorado Death Penalty*, DENVER POST, Aug. 19, 1981, at 2; Bill Myers, *Slayer Gets State's First Death Penalty*, DENVER POST, Oct. 1, 1981, at 1.

197. *People v. Duree*, 690 P.2d 165 (Colo. 1984); Howard Pankratz, *Death Sentence Overturned; Ruling May Limit Penalty's Use*, DENVER POST, May 22, 1984, at A1.

198. Pat McGraw, *Suspect Going to Trial Without Choice of Lawyer*, DENVER POST, July 10, 1984, at 4; Pat McGraw, *Unwanted, Morin Public Defenders on Job*, DENVER POST, July 11, 1984, at 4; Pat McGraw, *Trial of Morin, Charged With Motel Slaying, Expected to Begin*, DENVER POST, July 12, 1984, at 4; Pat McGraw, *Prosecution Outlines Case Against Morin*, DENVER POST, July 13, 1984, at 10C; Pat McGraw, *Jeffco Jury Convicts Morin in Kidnap, Murder of Woman*, DENVER POST, July 19, 1984, at C1; Pat McGraw, *Jurors Allowed to Consider Morin's Record*, DENVER POST, July 20, 1984, at 4; Pat McGraw, *Jury Recommends Gas-Chamber Death for Morin*, DENVER POST, July 24, 1984, at 4; Pat McGraw, *Morin Says He's a 'Victim'; Faces 3rd Death Ruling*, DENVER POST, Aug. 13, 1984, at 4; Kit Miniclier, *Morin Sentenced to Death in Colorado's Gas Chamber*, DENVER POST, Aug. 14, 1984, at 7.

199. *Killer of Three Women Executed in Texas*, DENVER POST, Mar. 13, 1985, at 13.

200. Mike Peters, *Jury: Arguello Is Guilty*, GREELEY TRIBUNE, July 22, 1982, at 1; Mike Peters, *Arguello to Die, Jury Determines in Russell Case*, GREELEY TRIBUNE, July 23, 1982, at 1; Mike Peters, *Death Penalty Issued Arguello*, GREELEY TRIBUNE, July 24, 1982, at 1. After the conviction and death sentence, the GREELEY TRIBUNE wrote a lengthy four-part series on the crime and trial. See Mike Peters, *What Price Life? Fourteen Dollars*, GREELEY TRIBUNE, Aug. 1, 1982, at 1; Mike Peters, *Dec. 3, 1981, Was a Routine Day Until 9 p.m.*, GREELEY TRIBUNE, Aug. 2, 1982, at 1; Mike Peters, *Diary of Russell Murder Probe*, GREELEY TRIBUNE, Aug. 3, 1982, at 1; Mike Peters, *Confession, Innocent Plea Made Arguello Trial Unusual*, GREELEY TRIBUNE, Aug. 4, 1982, at 1.

was denied by the trial court.²⁰¹ The following week, Arguello committed suicide by hanging himself in his cell at Centennial Correctional Institution in Cañon City.²⁰²

11. RICHARD OWEN DRAKE. December 16, 1982. Sentenced to death for masterminding the murder of his wife, who was actually stabbed to death by Drake's brother, James.²⁰³ The alleged motive was to collect from Mrs. Drake's life insurance policy. James was subsequently convicted of being an accessory to murder and sentenced to eight years in prison.²⁰⁴ In 1988 the death sentence was vacated by the state supreme court because of faulty jury instructions,²⁰⁵ and Drake was re-sentenced to life imprisonment.

12. FRANK RODRIGUEZ. November 14, 1984. Sentenced to death for the murder of Lorraine Martelli, who was kidnapped, robbed, raped and slowly stabbed to death. Frank's brother, Chris, was also convicted of first-degree murder for the crime.²⁰⁶ On initial appeal, both the conviction and the death sentence were affirmed.²⁰⁷ In 2002, Rodriguez died of complications from Hepatitis C while still on death row.²⁰⁸

13. GARY LEE DAVIS. July 21, 1986. Convicted of raping and killing an Adams County woman, Virginia May, whose nude body was found abandoned in a ravine. Also convicted was Davis's wife, Rebecca, who was sentenced to life imprisonment for her role in the crimes. Davis's appeals were denied,²⁰⁹ and he was executed on October 13, 1997.²¹⁰

14. JOHN O'NEILL. February 3, 1987. Convicted of killing a friend and partner in the marijuana growing business, John Baca, because he

201. Mike Peters, *Arguello Appeal Denied*, GREELEY TRIBUNE, Jan. 11, 1983, at 1.

202. Bob Diddlebock, *Convicted Slayer Is Found Hanged in Cell*, ROCKY MOUNTAIN NEWS, Jan. 17, 1983, at 9; Mike Peters, *Arguello Kills Self, Fulfills Warnings*, GREELEY TRIBUNE, Jan. 17, 1983, at 1.

203. Karen Odom, *Two Brothers Possess Same Goal: Stay Alive*, DENVER POST, July 15, 1984, at 1E; *Jury Hands Spouse Death in Murder*, DENVER POST, Dec. 17, 1983, at D5; *Death Sentence Imposed*, DENVER POST, Jan. 17, 1984, at 8.

204. Karen Odom, *Brother Gets Prison for Providing Alibi*, DENVER POST, Dec. 1, 1984, at 8.

205. *People v. Drake*, 748 P.2d 1237 (Colo. 1988).

206. Howard Pankratz, *Rodriguez Sentenced to Die*, DENVER POST, Dec. 18, 1986, at 1; Howard Pankratz, *Judge Orders Execution of Rodriguez*, DENVER POST, Jan. 29, 1987, at B1.

207. *People v. Rodriguez*, 794 P.2d 965 (Colo. 1990); *People v. Rodriguez*, 914 P.2d 230 (Colo. 1996).

208. Jenn Kostka, *Death-Row Inmate Dies of Illness; Murderer Had Nearly Exhausted Appeals*, DENVER POST, March 10, 2002, at B1.

209. *People v. Davis*, 794 P.2d 159 (Colo. 1990); *Davis v. People*, 871 P.2d 769 (Colo. 1994).

210. Kit Miniclier, *Abducted Byers Woman Beaten Before Dying*, DENVER POST, July 25, 1989, at B1; Kevin Simpson, *David Dies at 8:33 p.m.; Ginny May's Killer Fulfills Sentence After 11 Years*, DENVER POST, Oct. 14, 1997, at 1.

believed that Baca was not sharing the proceeds. Baca's son pled guilty to being an accessory in the case.²¹¹ In 1990 the state supreme court vacated the death sentence because of improper jury instructions.²¹²

15. RONALD LEE WHITE. August, 1987. After guilty pleas, White was convicted on two counts of first-degree murder and sentenced to terms of life imprisonment. Shortly thereafter, he became a suspect in the murder of a former roommate, Paul Vosika. In 1991 he pled guilty to the Vosika murder and requested a death sentence, and this request was granted. On appeal, the conviction and death sentence were affirmed.²¹³ In May 1998 the death sentence was set aside by a District Court judge after investigators discovered boxes of material in possession of the sheriff that had not been turned over to the defense during the trial.²¹⁴ After that new sentencing phase hearing in 2001 (before a judge only, not a jury), White was sentenced to life imprisonment.²¹⁵

16. NATHAN DUNLAP. December 14, 1993. Convicted of four counts of first-degree murder and sentenced to death for an after-hours killing spree in a Chuck E. Cheese restaurant in Aurora in 1993.²¹⁶ Dunlap, age 19, had been fired from his position as cook in the restaurant; the murders were committed in revenge some five months later. The victims, all restaurant employees, included a 50-year-old woman, Marge Kohlberg, and three teenagers, Sylvia Crowell, Ben Grant, and Colleen O'Connor. After a change of venue to Colorado Springs and a six-week trial, Dunlap was convicted, and on March 7, 1996, the same trial jury recommended a death sentence.²¹⁷ He was formally sentenced to death on May 17, 1996.²¹⁸ On appeal the conviction and sentence were affirmed.²¹⁹ Dunlap remains on death row as of April 2006.

17. ROBERT ELIOT HARLAN. February 12, 1994. Convicted of the kidnap, rape and murder of Rhonda Maloney. After Harlan forced Ma-

211. Thomas Graf, *Pot Dealer Found Guilty of Murder in Shooting Death of His Partner*, DENVER POST, Nov. 17, 1987, at 2B; George Lane, *O'Neill Ordered Executed for Killing 'Best Friend'*, DENVER POST, Nov. 19, 1987, at 1C.

212. *People v. O'Neill*, 803 P.2d 164 (Colo. 1990).

213. *People v. White*, 870 P.2d 424 (Colo. 1994); Howard Pankratz, *State High Court Upholds Murderer's Death Sentence*, DENVER POST, Jan. 11, 1994, at B3.

214. Tillie Fong, *Condemned Murderer to Receive New Hearing to Determine Penalty*, ROCKY MOUNTAIN NEWS, May 30, 1998, at 3.

215. Erin Emery, *Death Row Inmate Gets Reprieve—A Life Sentence*, DENVER POST, Aug. 23, 2001, at B2.

216. Ann Imse, *A Jury In the Dark?*, ROCKY MOUNTAIN NEWS, June 28, 2003, at 23A.

217. Ginny McKibben, *It's Death for Dunlap*, DENVER POST, Mar. 8, 1996, at 1.

218. Charlie Brennan, *Dunlap Erupts in Rage; Receives Death Sentence*, ROCKY MOUNTAIN NEWS, May 18, 1996, at 5; Ginny McKibben, *Condemned Killer Unleashes Rage in Court*, DENVER POST, May 18, 1996, at 1.

219. *People v. Dunlap*, 975 P.2d 723 (Colo. 1999); *People v. Dunlap*, 36 P.3d 778 (Colo. 2001).

loney's car off an interstate highway and sexually assaulted her, a motorist, Jaquie Creazzo, saw their car by the side of the road and stopped to see if anyone needed assistance. Maloney jumped out of Harlan's car and into Creazzo's and explained to Creazzo that she had been kidnapped and raped. They then sped down the highway, with Harlan in pursuit firing a gun at the two women. Creazzo's car exited the highway and flipped over on the front lawn of the Thornton Police Department; she had been shot in the spine resulting in lifelong paralysis. Harlan grabbed Maloney from the overturned car and drove away with her, and killed her shortly thereafter. This history is recounted in a decision by the Colorado Supreme Court that affirmed the convictions and death sentence.²²⁰ On further appeal, the death sentence was vacated because the jury had consulted non-record materials (a bible) during their deliberations.²²¹ Harlan was then resentenced to life imprisonment.²²²

18. GEORGE WILLIAM WOLDT. April 29, 1997. Convicted (with Lucas Salmon, who was sentenced to life imprisonment for his role in the crimes) and sentenced to death for the kidnapping, rape, and murder of a University of Colorado–Colorado Springs student named Jacine Gielinski. The victim was kidnapped from a parking lot and taken to a nearby elementary school where she was raped and stabbed.²²³ In 2003, after the Supreme Court's decision in *Ring v. Arizona*,²²⁴ the Colorado Supreme Court vacated Woldt's death sentence because it had been imposed by a three-judge panel, and ordered that he be resentenced to life imprisonment without the possibility of parole.²²⁵

19. FRANCISCO MARTINEZ. May 31, 1997. Convicted of first-degree murder for the kidnapping, rape, and murder of a fourteen-year-old girl, Brandaline "Brandy" Duvall.²²⁶ Martinez was one of seven gang members involved in the crimes, although he was identified as the person who stabbed her to death. Before the penalty phase began, the Colorado Supreme Court rejected a challenge to the discovery requirements applicable in the penalty proceedings.²²⁷ Martinez then became the first defendant to be sentenced to death in Colorado by a three-judge

220. *People v. Harlan*, 8 P.3d 448 (Colo. 2000).

221. *People v. Harlan*, 109 P.3d 616 (Colo. 2005).

222. Felix Doligosa, Jr., *Life Term for Harlan*, ROCKY MOUNTAIN NEWS, Dec. 20, 2005, at 29A.

223. Erin Emery, *Torture Murderer Gets Death Sentence: Judges Rule in Rape, Killing of Student*, DENVER POST, Sept. 7, 2000, at 1.

224. 536 U.S. 584 (2002).

225. *Woldt v. People*, 64 P.3d 256 (Colo. 2003).

226. Marilyn Robinson, *3 Held in Teen Girl's Slaying; Other Reputed Gangsters Sought*, DENVER POST, June 17, 1997, at B1.

227. *People v. Martinez*, 970 P.2d 469 (1998).

panel.²²⁸ In 2003, after the Supreme Court's decision in *Ring v. Arizona*,²²⁹ the Colorado Supreme Court vacated Martinez's death sentence because it had been imposed by a three-judge panel, and ordered that he be resentenced to life imprisonment without the possibility of parole.²³⁰

20. WILLIAM CODY NEAL. June 7, 1998. Sentenced to death after pleading guilty to three counts of first-degree murder. The victims, Rebecca Holbertson, Angela Fite (Neal's girlfriend), and Candace Walters, were killed during a six-day spree, each with a wood-splitting maul. A fourth victim, who survived, was kidnapped, tied to a bed, raped, and forced to watch one of the murders.²³¹ Neal fired his public defender, acted as his own attorney at trial,²³² and was sentenced to death by a three-judge panel.²³³ In 2001, Chief Deputy District Attorney Mark Pautler was suspended from practicing law for three months and otherwise reprimanded by the Colorado Supreme Court for trying to get Neal to surrender by falsely telling him that he was a public defender.²³⁴ In 2003, a district court vacated the death sentence and resentenced Neal to three consecutive terms of life imprisonment because the death sentence had been imposed by a three-judge panel,²³⁵ in violation of *Ring v. Arizona*.²³⁶

21. EDWARD MONTOUR, JR. October 18, 2002. Montour was sentenced to life imprisonment without parole for the 1997 murder of his 11-week old daughter. He was serving that sentence at Limon Correctional Facility when he confessed to killing a prison guard, Eric Autobee. Autobee was the first correctional officer in Colorado to be killed by an inmate since 1929.²³⁷ At trial (after a change of venue to Castle Rock), Montour represented himself, waived his right to a jury, and pled guilty before being sentenced to death by the trial judge. The murder occurred only 17 days after a new death penalty law went into effect in the state,

228. Kieran Nicholson, *Judges Say Killer Must Die; Death Sentence a First by Panel*, DENVER POST, May 28, 1999, at 1.

229. 536 U.S. 584 (2002).

230. *Woldt v. People*, 64 P.3d 256 (Colo. 2003).

231. Kieran Nicholson, *Woman Tells of Murder Horror; Judges Weigh Penalty for Neal*, DENVER POST, Sept. 22, 1999, at B2.

232. Kieran Nicholson, *Neal Admits Killing 3 Women; Prosecutors to Seek Death Penalty*, DENVER POST, Feb. 26, 1999, at B1.

233. Kieran Nicholson, *Ax Killer Sentenced to Death*, DENVER POST, Sept. 30, 1999, at 1.

234. John Ingold, *Jeffco Deputy DA Censured; Pautler Not Sorry for Actions in Neal Case*, DENVER POST, Apr. 4, 2001, at B2; *In the Matter of Mark C. Pautler*, 47 P.3d 1175 (Colo. 2002).

235. *'99 Death Sentence Commuted for Neal*, DENVER POST, Dec. 14, 2003, at B2.

236. 536 U.S. 584 (2002).

237. Michael BeDan & Charley Able, *Limon Prison Kitchen Boss Slain*, ROCKY MOUNTAIN NEWS, Oct. 19, 2002, at 3.

2006] DEATH SENTENCING IN COLORADO (1980–1999) 591

removing sentencing authority from a three-judge panel and putting it into the hands of jurors.²³⁸ As of April 2006, Montour remains on death row.

238. Howard Pankratz, *Prison Slaying Brings Death Sentence: Convict Faces Execution for Murder of Worker*, DENVER POST, Feb. 28, 2003, at B1; Mike Patty, *Inmate Gets Death for Murder; Man was in Prison for Slaying Daughter Before Killing Officer*, ROCKY MOUNTAIN NEWS, Feb. 28, 2003, at 5A.

APPENDIX B
CASES IN WHICH THE DEATH PENALTY SOUGHT: 1980-1999²³⁹

<u>Defendant</u>	<u>Date</u>	<u>County</u>	<u>D's Race/ Gender</u>	<u>V's Race/ Gender</u>	<u>Plea</u>	<u>Outcome</u>
1. Kenyon Tolerton	07.17.80	Arapahoe	WM	WF	Guilty	Murder II
2. Robert Williams	09.11.80	Douglas	WM	WM	Not	Murder I*
3. Roger Cullen	09.21.80	El Paso	WM	WM WF	Not	Murder I*
4. Rodney Walker	11.09.80	El Paso	WM	WF	Guilty	Murder II
5. Edgar Duree	11.29.80	Weld	WM	WM	Not	Murder I**
6. James Manners	11.29.80	Weld	WM	WM	Not	Murder I*
7. Bob Landry	01.28.81	Boulder	WM	WF	Guilty	Murder I
8. Marion Pruett (Executed in Arkansas, April 12, 1999.)	10.16.81	Larimer	WM	WM (2)	Guilty	Murder I
9. Steven Morin (Executed in Texas, March 13, 1985.)	11.06.81	Jefferson	WM	WF	Not	Murder I**
10. Eugene Newsom	11.13.81	Adams	BM	BF	Not	Murder II
11. Leonard Bell	11.23.81	Denver	BM	WF	Guilty	Murder I
12. Johnnie Arguello	12.03.81	Weld	HM	WM	Not	Murder I**
13. Paul Huntington	01.29.82	Adams	BM	WF	Guilty	Murder I
14. Ross Thomas	03.01.82	Arapahoe	WM	WM	Not	Murder I*
15. Warren Dow	06.12.82	Arapahoe	WM	WF	Guilty	Murder I
16. Vernon Templeman	12.06.82	El Paso	WM	WM	Not	Murder I*
17. Richard Drake	12.16.82	Mesa	WM	WF	Not	Murder I**
18. James Drake	12.16.82	Mesa	WM	WF	Not	Accessory
19. Bruce Duffield	02.10.83	Kit Carson	WM	WM (2)	Guilty	Murder II
20. Randy Wilson	02.10.83	Kit Carson	WM	WM (2)	Guilty	Agg. Robbery
21. Hurbando Garcia	04.23.83	Montrose	HM	WM	Guilty	Murder II
22. Sharon Nelson #1	07.23.83	Jefferson	WF	WM	Guilty	Murder
23. Gary Adams #1	07.23.83	Jefferson	WM	WM	Guilty	Murder I
24. Ronald Reggans	09.06.83	Denver	BM	WF	Guilty	Murder I
25. Charles R. Smith	11.12.83	Yuma	WM	WM	Not	Murder I*
26. Keith Porter	04.24.84	Pitkin	WM	WM	Guilty	Murder II
27. Denver C. Maine	10.07.84	Grand	WM	WM	Guilty	Murder I
28. Frank Rodriguez	11.14.84	Denver	HM	WF	Not	Murder I**
29. Chris Rodriguez	11.14.84	Denver	HM	WF	Not	Murder I*
30. Willie Earl Guyton	12.29.84	Adams	BM	BF (2)	Guilty	Murder I
31. Anne Durand #1	05.01.85	Gilpin	WF	WF	Guilty	Conspiracy
32. James Moulton #1	05.01.85	Gilpin	WM	WF	Guilty	Murder I
33. Raymond Baca	08.30.85	Pueblo	HM	HM	Not	Acquitted
34. Donna Yaklich	12.12.85	Pueblo	WF	WM	Not	Conspiracy
35. Edward Greenwell	12.12.85	Pueblo	WM	WM	Guilty	Murder II
36. Anne Durand #2	01.07.86	Pueblo	WF	WM	Guilty	Conspiracy
37. James Moulton #2	01.07.86	Pueblo	WM	WM	Guilty	Murder I
38. Robert McCormick	01.20.86	Delta	WM	WM	Not	Murder I
39. Alexander Valdez	01.23.86	Arapahoe	HM	WM	Guilty	Murder I
40. Patrick Wood	01.27.86	Adams	WM	WM	Not	Murder I
41. Brian Stansfield	03.08.86	Logan	WM	WM	Guilty	Murder II
42. Richard Borrego	06.18.86	Jefferson	HM	WM	Not	Murder I*
43. Anthony Lucero	06.18.86	Jefferson	HM	WM	Not	Murder I*
44. Phillip Andrade	06.28.86	Weld	HM	WF	Not	Murder I*

239. Homicide occurred between Jan. 1, 1980 and Dec. 31, 1999, ordered by date of homicide.

2006] DEATH SENTENCING IN COLORADO (1980-1999) 593

45. Gary Davis (Executed 1997)	07.21.86	Adams	WM	WF	Not	Murder I**
46. Joseph Landers	08.14.86	Lincoln	WM	WM (2)	Guilty	Murder I
47. Stephen Sparks	10.27.86	Arapahoe	BM	WF	Guilty	Murder I
48. Ricky Saathoff	01.18.87	Adams	WM	WF	Not	Murder I*
49. John O'Neill	02.03.87	Jefferson	WM	HM	Not	Murder I**
50. Michael Tenneson	05.20.87	Denver	WM	HM (2)	Not	Murder I**
51. Ron White	08.-.87	Pueblo	WM	WM	Guilty	Murder I**
52. Timothy Vialpando	09.06.87	Denver	HM	WM	Not	Murder I*
53. Marvin Walker	09.18.87	Adams	BM	WM	Not	Murder I*
54. Ronald Pierce	12.07.87	El Paso	WM	HM (2)	Guilty	Murder I
55. David Hisey	01.09.88	Moffat	WM	WF	Guilty	Murder I
				WM (2)		
56. Richard Cronin	01.19.88	El Paso	WM	WF	Guilty	Murder I
57. Stanley Jurgeвич	02.06.88	Routt	WM	WM	Not	Murder I
58. Sharon Nelson #2	11.18.88	Adams	WF	WM	Guilty	Murder I
59. Gary Adams #2	11.18.88	Adams	WM	WM	Guilty	Murder I
60. Kevin Fears	06.06.89	Denver	BM	WM (2)	Not	Murder I*
61. Roger Young	06.06.89	Denver	BM	WM (2)	Guilty	Murder I
62. Joseph Young	06.06.89	Denver	BM	WM (2)	Guilty	Conspiracy
63. Frank Orona	09.26.89	El Paso	HM	WM	Not	Murder I*
64. Gary Newman	10.11.89	Garfield	WM	WF (2)	Guilty	Murder I
65. James Carroll	11.07.89	El Paso	BM	WM	Not	Burglary & Agg. Robbery
66. Michael G. Bell	08.23.90	Boulder	WM	WM (4)	Guilty	Murder I
67. Brian Hood	09.12.90	El Paso	WM	WF	Not	Conspiracy
68. Allen Thomas	02.04.91	Adams	BM	WF	Not	Murder I*
69. Woodie Ashfield	02.08.91	Pueblo	BM	HF	Guilty	Murder II
70. James King	06.16.91	Denver	WM	WM (3)	Not	Acquitted
				BM		
71. Joseph Aguayo	07.30.91	Gilpin	WM	WM	Not	Murder I
72. Marvin Dennis, Jr.	07.30.91	Gilpin	BM	WM	Not	Murder I
73. Jeffrey Alexander	03.05.92	Denver	BM	HM	Guilty	Murder I
				HF (2)		
74. Cory Zorn	04.02.92	Adams	WM	WF	Guilty	Murder I
75. Ruben Aragon	12.13.92	Arapahoe	HM	HF	Guilty	Murder II
76. Thomas Luther	03.27.93	Jefferson	WM	WF	Not	Murder II
77. Eugene Bayliss	04.17.93	El Paso	WM	WM (2)	Not	Acquitted
(After acquittal on all charges in state court, pled guilty to weapons charge in federal court.)						
78. Kevin Deon Smith	06.15.93	Jefferson	BM	BM	Guilty	Murder I
79. Andre Dumas	06.15.93	Jefferson	BM	BM	Guilty	Murder II
80. Kenyon Tolerton #2	08.27.93	Arapahoe	WM	WF	Guilty	Murder I
81. Nathan Dunlap	12.14.93	Arapahoe	BM	WF (3)	Not	Murder I**
				WM		
82. Robert Harlan	02.12.94	Adams	BM	WF	Not	Murder I**
83. Christopher Harris	04.04.94	Jefferson	WM	BM	Guilty	Murder I
				WM		
84. Andrew Staton	03.25.95	Summit	WM	WM	Not	Murder I
85. Albert Petrosky	04.28.95	Jefferson	WM	WF	Not	Murder I*
				HM		
				WM		
86. Jon Morris	08.11.95	Denver	BM	BF	Guilty	Murder
87. Christopher Shetskie	10.02.95	Park	WM	WF	Guilty	Murder I
	03.12.96	Arapahoe		WF		
88. Ryan Sepolen	05.19.96	Logan	BM	WM	Guilty	Murder II
89. George Woldt	04.29.97	El Paso	AM	WF	Not	Murder I**
90. Lucas Salmon	04.29.97	El Paso	WM	WF	Not	Murder I*
91. Robert Riggan	05.16.97	Jefferson	WM	WF	Not	Murder I*
92. Francisco Martinez	05.31.97	Jefferson	HM	HF	Not	Murder I**
93. Danny Martinez	05.31.97	Jefferson	HM	HF	Not	Murder I*

594

UNIVERSITY OF COLORADO LAW REVIEW

[Vol. 77]

94. Jacques Richardson	06.18.97	Denver	BM	WF	Not	Murder I*
95. Nathan Thrill	11.18.97	Denver	WM	BM	Guilty	Murder I
96. James Garner	01.19.98	Douglas	WM	WM	Not	Acquitted
				WF (2)		
97. Cong Van Than	06.24.98	Denver	AM	AF	Guilty	Murder I
				AM		
98. William Cody Neal	06.30.98	Jefferson	WM	WF	Guilty	Murder I**
	07.03.98			WF		
	07.05.98			WF		
99. Randy Cannister	09.10.98	Arapahoe	BM	BM	Not	Murder I
				BF		
				WM		
100. Dante Owens	09.10.98	Arapahoe	BM	BM	Not	Murder I*
				BF		
				WM		
101. Trevon Washington	09.10.98	Arapahoe	BM	BM	Not	Murder I
				BF		
				WM		
102. Abraham Hagos	11.07.98	Denver	BM	WM	Guilty	Murder I
103. Samnang Prim	11.07.98	Denver	AM	WM	Guilty	Murder II
104. John Sweeney	12.04.98	Adams	HM	WM	Not	Acquitted
105. Jesse Wilkinson	12.04.98	Adams	WM	WM	Not	Conspiracy
106. Omar Ramirez	12.23.98	Denver	HM	HM	Guilty	Murder I
				HF		
107. Donta Page	02.24.99	Denver	BM	WF	Not	Murder I*
108. Anthony Albert	08.19.99	El Paso	BM	BM	Guilty	Murder I
109. Manuel Melina	12.28.99	Adams	HM	HM	Not	Criminal Solicitation
110. Leandro Lopez	12.28.99	Adams	HM	HM	Guilty	Conspiracy

* Penalty Phase; life sentence imposed.

** Penalty Phase; sentenced to death.