On March 8, 1995, Governor George Pataki signed into law a bill that returned capital punishment to New York state, focusing attention once again on an old yet controversial issue.

According to information gathered by Bill Pooler, associate professor of sociology at the Maxwell School of Citizenship and Public Affairs and the College of Arts and Sciences, the most recent statistics from the United States Justice Department show 2,716 persons being held under death sentences in the United States at the end of 1993. Fifty-eight percent of those inmates were white, 41 percent were African American, and more than 98 percent were male. That year, 38 men were executed.

The most common method of execution, lethal injection, is authorized by 25 states and the federal government. Other methods include electrocution, lethal gas, hanging, and the firing squad. Most states restrict death sentences to those 18 and older, although some states allow execution for those as young as 14.

While two-thirds of all death-row inmates have had at least one previous felony conviction, mistakes do happen. A recent report by the House Judiciary Subcommittee on Civil and Constitutional Rights revealed that between 1970 and 1993, 48 people were released from death row after new evidence was discovered that over-turned their convictions.

Statistics like these just graze the surface of a much deeper issue; at the heart of the death penalty controversy lie the most fundamental questions of justice, equity, and the value of a human life. The way in which these questions are answered may determine the moral conscience of a nation. The subject is explored in greater depth in the following essays by SU alumni and faculty.
THE DEATH PENALTY—
AN ARGUMENT IN SUPPORT

By William J. Fitzpatrick

Some time after midnight on September 1, 1995, one person will take another person's life in New York state. That fact will become headline news—not because an innocent life is taken or because the victim's family is grieving their loss, but rather because the perpetrator may actually forfeit his or her own life as punishment for this deed.

We have become virtually immune to the moral outrage that should result from the taking of another human life by criminal means. Almost five people are murdered every day in New York state, over 50,000 murdered since August 15, 1963, when Eddie Lee Mays became the 695th and perhaps the last person executed in New York. And since that time, the state's murder rate has tripled, yes tripled.

We have all heard the arguments against the death penalty:

• It does not deter crime.

Upon whom are we supposed to rely for the rationale of this argument? The killers themselves? Of the hundred or so defendants I have convicted of homicide offenses, most were career liars long before they killed their first victims; not the most reliable database. Can there be any doubt that at least some of the 50,000 slaughtered since 1963 would be alive had their killers known that the ultimate punishment would be imposed for the ultimate crime?

• It costs too much.

This, of course, is a self-fulfilling prophecy. Opponents of the death penalty rely on cost as a factor in arguing against it. How much of this cost is caused by endless and frivolous appeals that have nothing to do with guilt or innocence, but rather involve those technicalities that lawyers love so much? I have never seen an actuarial study done on the cost of grief to a mother and father who have lost their child to a serial killer. That is the cost that concerns me.

• The death penalty is immoral.

Believe it or not, death penalty opponents do not have a monopoly on virtue. Some, myself included, believe that the only way to adequately reflect our high regard for human life is to exact adequate punishment on those who kill.

I have been in the prosecution business for almost 15 years and I spent five years as a defense attorney prior to being elected district attorney. I have prosecuted all kinds of killers—people who murdered for money, for sexual gratification, or just for the thrill of it.

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People often confuse opposition to the death penalty with sympathy for murderers. Some fear that if they oppose the death penalty, others will perceive them as insensitive and unsympathetic to murder victims and their families. These are emotional reactions to an emotional topic. It takes more strength than some people possess to really be objective about this topic. One way to do that, however, is to understand that no one who opposes the death penalty thinks that criminals should “get away with” anything or be treated leniently. One can oppose the death penalty but condone, for example, life sentences without parole.

There is no question that violent crime is a problem or that those who kill should be removed from society. But is hanging them, or injecting them with a deadly poison, or electrocuting them, or forcing them to breathe poisonous gas, ever the right thing to do? Does legal killing prevent others from killing illegally?

No one ever offers statistics to prove that the death penalty deters others from killing. Can we put people to death on the grounds that it deters others when there is nothing but rhetoric to support that thesis? Some argue that deterrence occurs when the killer is prevented by the death penalty from killing again. I am not prepared to put a person to death on the hypothetical ground that he or she might kill again.

On the other hand, murders continue at an alarming pace in states such as Florida and Texas, where the death penalty has been applied with regularity. Proponents will nearly always say, “I don’t care about deterrence, I just want to have justice done toward this miserable killer.” What does that leave us with? Revenge.

The death penalty absolutely does not deter and will not make our society safer. I have both prosecuted and defended accused murderers. Twenty-five years of experience has taught me that people charged with murder are by and large the rejects of our society. The potential consequences of their acts never cross their minds at the times they commit them. The average murder defendant kills in a fit of rage or in a compromised mental condition. The very idea that they will think about, and be deterred by, a possible death penalty in the moments before killing is ludicrous. Killers do not sit down and make a list of the pros and cons of
Would I seek the death penalty in all murder cases? Of course not. The sanction should clearly be used in the most extreme cases and only where the evidence of guilt and evidence of exceptionally cruel circumstances are overwhelming.

I helped convict a father who strangled his 6-year-old son because the boy had witnessed his mother’s murder. I prosecuted two men who tortured a 16-year-old girl for three days with coat hangers, whips, and a steam iron before they caved in her skull. I prosecuted another father who suffocated his own daughter for $10,000 in life insurance proceeds. Would these killers merit the death penalty? Absolutely. Yet all four will be eligible for parole early in the next century.

Maybe when we reawaken ourselves to that which is axiomatic, namely, that one goal of the criminal justice system must be retribution for victims of violent crime, then we can truly say we live in the land of the free and not the land of fear.

Consider the experience I had recently with one of my clients who had just been arraigned on multiple murder charges. The prosecutor’s words that he wanted the death penalty were still echoing in the courtroom when my client and I spoke in an adjacent conference room. You would think that his proposed execution would be foremost on his mind. It was not. My client complained to me that, at his arrest, police had broken some of his furniture. He insisted that I start immediate proceedings to have the government pay damages for the furniture. What did the death penalty threat accomplish? Nothing.

When emotion gives way to logic, it is clear that the death penalty is government-sponsored revenge. But the will of the people should stop short of deciding who is not “fit” to live. Government-sponsored killing desensitizes society to the idea of killing others. When we become that insensitive to killing, we debase ourselves just as any other murderer does.
our hundred fifty-five convicted rapists were executed between 1930 and 1969. Of those, 405 were black. None were white men convicted of raping black women. Race has long played a central role in the application of the death penalty in the United States, and that doesn’t appear to be changing: In 1990, a United States General Accounting Office study found a pattern indicating racial disparities in the imposition of the death penalty in state courts throughout the country.

Although the relationship between race and the death penalty has been much studied and discussed, the United States Supreme Court rarely addressed the issue prior to McCleskey v. Kemp in 1987. In McCleskey, the court directly examined the subject when Warren McCleskey, an African American, challenged his death sentence on the basis of racial discrimination. He was convicted in Georgia of killing a white police officer during the course of a robbery.

McCleskey introduced a study revealing that a victim’s race was the principal factor in determining who received the death penalty in Georgia. The Supreme Court accepted the validity of the study’s findings: that defendants who killed white victims were 4.3 times more likely to receive the death penalty than defendants who killed black victims; that blacks who killed whites were sentenced to death at nearly 22 times the rate of blacks who killed blacks, and more than seven times the rate of whites who killed blacks.

Despite the overwhelming evidence of racial prejudice in the Georgia capital sentencing scheme, a majority of Supreme Court justices were unwilling to declare the scheme unconstitutional. The court held that McCleskey had not established unconstitutional bias in the implementation of the death sentence in his case. According to the court, the study was “clearly insufficient to support an inference that any of the decision makers in McCleskey’s case acted with discriminatory purpose.”

The arbitrary and capricious effects of death penalty decisions prompted former Justice Harry Blackmun to write a historic dissent in 1994 in Callins v. Collins. He reviewed 22 years worth of Supreme Court decisions and concluded that the death penalty cannot be implemented in accordance with Constitutional requirements of fairness. In doing so, Blackmun cited the McCleskey opinion as a primary example of the discriminatory impact of race-based capital sentencing determinations, stating that “even under the most sophisticated death penalty statutes, race continues to play a major role in determining who shall live and who shall die.”

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