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EXECUTIVE CLEMENCY IN POST-FURMAN CAPITAL CASES

Michael L. Radelet*

Barbara A. Zsembik**

I. INTRODUCTION

In the 1972 case of *Furman v. Georgia*, the United States Supreme Court invalidated virtually all existing death penalty statutes in the United States.¹ Consequently, those jurisdictions that wanted to continue to execute were forced to revise their capital sentencing procedures. Since *Furman*, nearly all aspects of American death penalty law have been rewritten.² Left unchanged by both the courts and the legislatures, however, are the ways in which states decide which death-sentenced inmates will have their sentences commuted through the powers of executive clemency.

Clemency is a broad power resting in the executive branch of the government. It includes pardons (which invalidate both the guilt and the punishment of the defendant), reprieves (which temporarily postpone the execution), and commutations (which reduce the severity of punishment).³ "Clemency decisions — even in death penalty cases — are standardless in procedure, discretionary in ex-

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We appreciate the comments of Hugo Adam Bedau on a previous draft.

1. *Furman v. Georgia*, 408 U.S. 238 (1972). While effectively abolishing most death penalty statutes, the ruling left open the possibility that some mandatory death penalty statutes were still constitutionally acceptable. In later decisions, however, the Court made it clear that even mandatory death penalty statutes violate the Constitution. *Sumner v. Schuman*, 483 U.S. 66 (1987); *Roberts v. Louisiana*, 431 U.S. 633 (1977); *Roberts v. Louisiana*, 428 U.S. 325 (1976).

2. For an overview of various reactions to *Furman*, see Franklin E. Zimring & Gordon Hawkins, *Capital Punishment and the Eighth Amendment: Furman and Gregg in Retrospect*, 18 U.C. DAVIS L. REV. 927 (1985).

3. Daniel T. Kobil, *Do the Paperwork or Die: Clemency, Ohio Style?*, 52 OHIO ST. L.J. 655, 656-57, 660-61 (1991).

ercise, and unreviewable in result."⁴ Our focus in this article is on commutations awarded through the executive branch. In most states that have a death penalty, this power rests solely in the hands of the governor who acts alone. Other states use boards of pardons, which may or may not need gubernatorial concurrence to act.⁵

Three separate rationales underlying the use of executive clemency can be identified.⁶ The first is unrestrained mercy. Clemency is a free gift of the executive, needing no justification or pretense of fairness. The second is a quasi-judicial rationale suggesting that governors and clemency officials may consider factors that were not presented or considered by trial judges, juries, or appellate courts. The third rationale is a retributive notion of clemency, which is intended to ensure that only the most deserving among the convicted murderers are executed.⁷ This third rationale is the narrowest of the appropriate uses of clemency. Historically, the use of executive clemency has encompassed the broader views of its proper rationales.⁸

This article has two goals. The first is simply to document the frequency of clemency for inmates sentenced to death since 1972. While several authorities have already commented on the decline in the frequency and rate of executive clemency in capital cases over the last two decades,⁹ we attempt to pinpoint that decline by providing names, dates, and places of the relevant clemencies. This analysis will allow for the assessment of the precise role of executive clemency in today's capital punishment process, and will provide insight into whether executive clemency is a filter available more in theory than in actual practice.

4. Hugo A. Bedau, *The Decline of Executive Clemency in Capital Cases*, 18 N.Y.U. REV. L. & SOC. CHANGE 255, 257 (1990-91) (citing Deborah Leavy, *A Matter of Life and Death: Due Process Protection in Capital Clemency Proceedings*, 90 YALE L.J. 889, 891 (1981)).

5. "At present, of the states with the death penalty, twenty-two confer an exclusive clemency power on the governor, while fifteen use a pardon board or other body to check the executive." Paul W. Cobb, Jr., *Reviving Mercy in the Structure of Capital Punishment*, 99 YALE L.J. 389, 392 (1989).

6. Bedau, *supra* note 4, at 257-58.

7. KATHLEEN D. MOORE, PARDONS: JUSTICE, MERCY, AND THE PUBLIC INTEREST 92-95 (1989).

8. For a discussion of the historical origins and philosophical underpinnings of the modern use of clemency power in the United States, see Daniel T. Kobil, *The Quality of Mercy Strained: Wrestling the Pardoning Power from the King*, 69 TEX. L. REV. 569 (1991).

9. See Bedau, *supra* note 4; Cobb, *supra* note 5, at 393-400; Joseph B. Schimmel, *Commutation of the Death Sentence: Florida Steps Back from Justice and Mercy*, 20 FLA. ST. U. L. REV. 253, 266-67 (1992).

The second goal of this article is to document the reasons for the commutations. We can thereby ascertain inductively why clemency powers have been used in the last two decades. While several authors have provided outlines of various reasons why clemency might be awarded,¹⁰ none has attempted to specify the frequency with which each reason is used. By looking at the universe of actual commutations since *Furman*, we will be able to do this.

II. METHODS

Unfortunately, there is no single source which provides statistics regarding the frequency of clemency and the names of prisoners who are awarded clemency in capital cases. The best data bank on post-*Furman* capital cases is maintained by the NAACP Legal Defense and Educational Fund ("LDF") in New York. For every death sentence handed down in American jurisdictions since 1972, LDF researchers obtain the defendant's name, demographic information (such as sex and race) for the defendant and victim, and the name and address of the defendant's attorney. The case is then followed and charted until the defendant is removed from death row, either by execution, other cause of death, trial or appellate court decisions, or by executive action. A list of death row inmates and summary of their demographic characteristics, as well as a list of post-*Furman* executions, is published regularly by that office.¹¹

To identify post-*Furman* capital cases in which executive clemency was granted, our first step was to contact LDF and obtain the data for every clemency listed. We found, however, that the LDF data set was incomplete and inaccurate. It omitted several cases that we knew (from other sources) were ones in which clemency had been given, and included other cases in which no clemency had been awarded. Each case the LDF identified had to be checked. It was necessary to consult other sources to see whether clemency cases that were not known to the LDF could be identified.

To do this, we contacted the American headquarters of Amnesty International-U.S.A. in New York City, the National Coalition to Abolish the Death Penalty in Washington, D.C., and the Capital

10. Elkan Abramowitz & David Paget, *Executive Clemency in Capital Cases*, 39 N.Y.U. L. REV. 136 (1964); Bedau, *supra* note 4, at 259-61.

11. See NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., DEATH ROW, U.S.A. (Winter, 1992).

Punishment Office of the American Civil Liberties Union in New York City and obtained copies of their clemency files. To identify or check on individual cases or states, we also contacted experienced death penalty attorneys and activists, and, in some states, veteran death row inmates who might know something about individual cases. Using these methodologies, we are fairly confident that we have identified all the relevant cases.

Next, we attempted to learn more about each case. For each case, we checked appellate decisions and newspaper accounts. These sources were often sufficient to construct a picture of why clemency was given. In a few cases, interviews with participants on the defendant's legal team were necessary to complete the account.

III. FINDINGS

Our search identified seventy cases since 1972 in which inmates sentenced to death later had their death sentences commuted to terms of imprisonment through executive clemency procedures.¹² The underlying basis for granting clemency in these seventy cases can be analyzed by subdividing the clemencies into two broad categories. In the first category are clemencies given out of "judicial expediency." That is, cases where commutations were given by the executive because courts had vacated, or were likely to vacate, the death sentence, and a commutation would save the time and expense of going through a new sentencing proceeding. The second category of cases includes clemencies given for humanitarian reasons. Here, the clemencies were awarded because of a governor's

12. This finding differs from the commutation frequencies reported by the United States Department of Justice, which were recently summarized by Professor Hugo A. Bedau. See Bedau, *supra* note 4, at 263. In part, the difference between our frequencies and those compiled by the Justice Department is attributable to the fact that the Justice Department failed to report data on commutations for 1972 through 1977. *Id.* at 263 n.46. However, the Justice Department's figures list 64 death penalty commutations for the years 1978 through 1988, while our data show the figure for these years to be 49. Because our search for relevant cases was thorough, we are convinced that the Justice Department's figures are in error. For example, the Justice Department reports a commutation in Virginia in 1982. See BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CAPITAL PUNISHMENT 1982 at 40 (table 17). (As Bedau reports, in subsequent years the Justice Department did not break down its commutation figures by state. Bedau, *supra* note 4, at 262 n.45). Our interviews with several Virginia death penalty attorneys and paralegals, as well as the records of LDF and the other organizations we surveyed, failed to identify the case. We do not know whether the errors in the Justice Department's tallies were caused by carelessness, by occasional confusion between judicial commutations and executive commutations, or because of inmates sentenced to death before *Furman* who were not formally removed from death row until later.

opposition to the death penalty, or because of unique characteristics of the crime or of the offender. We consider each category in turn.

A. *Commutations for Judicial Expediency*

The majority of the clemency cases we identified (forty-one cases, 58.6 percent of the total) fall into this category. Included are five clemencies from Virginia in 1976 and thirty-six cases from Texas. Because the characteristics of the crime or the offender were irrelevant to the clemency decisions, we will not present details of the cases.

On October 19, 1976, Virginia Governor Mills E. Godwin, Jr., commuted the death sentences of five inmates: Allen Gooch, Malcolm Jefferson, Vernon Joe, Tony Lewis, and Edward Washington. Gooch had been convicted in a murder-for-hire plot, while the other four were convicted of killing prison guards.¹³ Governor Godwin commuted the sentences in light of two recent U.S. Supreme Court decisions invalidating mandatory death penalty statutes (similar to Virginia's) in other states.¹⁴

The remaining thirty-six commutations given for judicial expediency are from Texas. In Texas, a death sentence can be imposed only by unanimous vote of the trial jury.¹⁵ If an error is committed at the sentencing phase of a trial, the case cannot be remanded for a new sentencing proceeding. Likewise, the highest criminal court in Texas, the Texas Court of Criminal Appeals, "has long held that it may not reduce the punishment assessed by the jury."¹⁶ Rather, according to the Texas Code of Criminal Procedure, "[i]n the event the jury shall fail to agree, a mistrial shall be declared, the jury shall be discharged, and no jeopardy shall attach."¹⁷ Thus, "[i]f the punishment was erroneously imposed, then the case stands in the same position as if the jury had failed to reach a

13. Claude Burrows, *Death Sentences of 5 Commuted*, RICHMOND TIMES-DISPATCH, Oct. 19, 1976, at 1.

14. See *Roberts v. Louisiana*, 428 U.S. 325 (1976) (plurality opinion); *Woodson v. North Carolina*, 428 U.S. 280 (1976) (plurality opinion). For the effect of these decisions on Virginia's capital statute, see James T. Lloyd, Jr., *Questions Surrounding Virginia's Death Penalty*, 17 U. RICH. L. REV. 603, 605 (1983).

15. CHARLES L. BLACK, JR., *CAPITAL PUNISHMENT: THE INEVITABILITY OF CAPRICE AND MISTAKE* 67 (2d ed. 1981).

16. *Ocker v. State*, 477 S.W.2d 288, 290 (Tex. Crim. App. 1972).

17. TEX. CODE CRIM. PROC. ANN. § 37.07(3)(c) (West 1993).

verdict."¹⁸ The whole case, including the guilt-innocence phase, must be redone. In contrast, "a commutation does not affect the judgment, but merely mitigates the punishment that can be given."¹⁹ To avoid the expense of a new trial, clemency powers can be used.²⁰

After a death sentence is commuted to life, error at the punishment stage of the trial is judged to be "harmless."²¹ In one notable case, an innocent death row inmate from Texas, Randall Dale Adams, won sentencing relief from the United States Supreme Court.²² Adams was hoping that a new trial would allow him to prove his innocence. However, two weeks after the Supreme Court's decision, Governor Bill Clements instead commuted Adams' sentence to life imprisonment, thereby denying Adams the opportunity to have his case reheard.²³ It took eight more years for Adams to establish his innocence and gain his freedom. The vindication came only because he was fortunate enough to interest a movie producer in his case.²⁴

The United States Supreme Court's decision in *Adams v. Texas*²⁵ also affected other cases. Most of the Texas clemencies we identified resulted from the decisions in either *Adams* or *Smith v. Estelle*.²⁶ The three dozen commutations from Texas are:²⁷

18. *Ocker*, 477 S.W.2d at 291.

19. *Whan v. State*, 485 S.W.2d 275, 277 (Tex. Crim. App. 1972).

20. But a commutation to imprisonment is not always given when there is reversible error at sentencing. For example, Johnny Penry won relief from the United States Supreme Court because his sentencing jury had been unable to hear evidence of his mental retardation. *Penry v. Lynaugh*, 492 U.S. 492 (1989). Instead of the state's clemency powers being invoked, Penry was given a new trial and was resentenced to death. ROBERT PERSKE, *UNEQUAL JUSTICE: WHAT CAN HAPPEN WHEN PERSONS WITH RETARDATION OR OTHER DEVELOPMENTAL DISABILITIES ENCOUNTER THE CRIMINAL JUSTICE SYSTEM* 63-75 (1991).

21. *Adams v. State*, 624 S.W.2d 568 (Tex. Crim. App. 1981); *Whan*, 485 S.W.2d 275.

22. *Adams v. Texas*, 448 U.S. 38 (1980).

23. *RANDALL ADAMS ET AL., ADAMS V. TEXAS* 182-86 (1991).

24. *Id.*; MICHAEL L. RADELET ET AL., *IN SPITE OF INNOCENCE* 60-73 (1992).

25. 448 U.S. 38 (1980).

26. 451 U.S. 454 (1981).

27. Information on most of the Texas cases comes from the NAACP Legal Defense and Educational Fund in New York. However, crucial additional information was provided by Texas death row inmate Jim Vanderbilt, who has charted Texas death penalty cases from his death row cell in Huntsville for the last 16 years. We are indebted to Mr. Vanderbilt for sharing his work with us.

Our attempts to pinpoint the precise reasons for each commutation failed. Upon asking, we were told, "unfortunately, I am unable to release that information to you upon the advice of our legal counsel." Letter from Rebecca Tinkey, Executive Clemency Unit, Pardons and Paroles Division, Texas Department of Criminal Justice, to Michael L. Radelet (Oct. 11, 1991) (on file with authors).

1.	July 11, 1980.	Randall Dale Adams.
2.	Feb. 19, 1981.	James Burns.
3.	May 19, 1981.	John Henry Quinones.
4.	June 1, 1981.	Jeremiah O'Pry.
5.	June 17, 1981.	Jackie Ray Osteen.
6.	June 17, 1981.	Ernest Benjamin Smith.
7.	Aug. 17, 1981.	James Simmons.
8.	Oct. 16, 1981.	Magdaleno Rodriguez.
9.	Oct. 21, 1981.	Artie Armour.
10.	Oct. 21, 1981.	William Hammett.
11.	Oct. 21, 1981.	John Lewis Wilder.
12.	Nov. 9, 1981.	George Clark.
13.	Nov. 9, 1981.	Kenneth Davis.
14.	Jan. 7, 1982.	Kent Graham.
15.	Jan. 7, 1982.	William Hovilla.
16.	Apr. 30, 1982.	Robert May.
17.	June 15, 1982.	Selwynn Gholson.
18.	June 16, 1982.	Anderson Hughes.
19.	June 25, 1982.	Richard Denney.
20.	June 25, 1982.	Larry Joe Ross.
21.	Sept. 20, 1982.	Mark Moore.
22.	Oct. 20, 1982.	Doyle Boulware.
23.	Nov. 18, 1982.	Sammie English.
24.	Dec. 6, 1982.	Benard Ferguson.
25.	Jan. 11, 1983.	Wilbur Collins.

There is, however, a relatively standard "proclamation" that is released at the time of the commutation. Although it does not specify reasons for the commutation, it reveals procedures and who recommends the commutation. The following proclamation concerning Muriel Crawford is a typical one:

WHEREAS, MURRIEL DON CRAWFORD, JR., EXECUTION NO. 569, was convicted of the offense of Capital Murder, Cause No. 17618B, on April 15, 1977, in the 181st Judicial District of Potter County, Texas and the sentence was set at Death, and

WHEREAS, the District Judge of the 181st Judicial District Court, Potter County, Texas, the District Attorney of Potter County, Texas, and the Sheriff of Potter County have recommended commutation from Death to Life Imprisonment in the Texas Department of Corrections, and

WHEREAS, the Board of Pardons and Paroles of Texas subsequently recommended the Commutation of Sentence from Death to Life Imprisonment in the Texas Department of Corrections

William P. Clements, Governor of Texas, Proclamation No. 87-20741 (Oct. 14, 1987).

As the case of Randall Dale Adams illustrates, the defendant himself need not apply for (or even desire) the commutation. *Adams*, 624 S.E.2d 568.

26.	Mar. 15, 1983.	Jerry Hartfield.
27.	Mar. 22, 1983.	Moses Garcia.
28.	Mar. 22, 1983.	James Livingston.
29.	Sept. 6, 1983.	Stanley Burkes.
30.	Nov. 18, 1983.	John Shippy.
31.	Nov. 22, 1983.	Alton von Byrd.
32.	May 4, 1984.	Walter Bell. ²⁸
33.	Dec. 13, 1984.	Jesse Villarreal.
34.	Apr. 30, 1987.	Jose Moises Guzman.
35.	Oct. 14, 1987.	Murriel Crawford.
36.	July 11, 1990.	Phillip D. Tompkins.

Table 1 displays the frequency of clemencies by year. The first column of this table lists only the "judicial expediency" cases. Thirty of the thirty-six Texas commutations (83.3 percent) were granted over the three-year period from 1981-1983. Clearly, this is because the rulings in *Adams*²⁹ and *Smith*³⁰ affected several inmates, and authorities reacted to the decisions by giving mass commutations.

28. Mr. Bell remains on death row in Texas under a second death sentence. See NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., *supra* note 11, at 32.

29. 448 U.S. 38 (1980).

30. 451 U.S. 454 (1981).

Table 1

Commutations in American Capital Cases, 1973-1992

Year	Commutations		Total
	Judicial Expediency	Humanitarian	
1973	0	0	0
1974	0	0	0
1975	0	0	0
1976	5	0	5
1977	0	1	1
1978	0	0	0
1979	0	2	2
1980	1	2	3
1981	12	1	13
1982	11	0	11
1983	7	1	8
1984	2	0	2
1985	0	0	0
1986	0	5	5
1987	2	1	3
1988	0	2	2
1989	0	1	1
1990	1	1	2
1991	0	10	10
1992	0	2	2
Totals	41	29	70

B. *Commutations for Humanitarian Reasons*

The second category of cases is more consistent with the traditional role of clemency as a humanitarian act. Called "justice-enhancing" commutations by Kobil,³¹ these clemencies are intended to ensure that the punishment is truly fair and commensurate with the defendant's blameworthiness. We have identified twenty-nine such cases. They are listed, each with a brief descriptive vignette, in Appendix A.

31. Kobil, *supra* note 8, at 579-83.

The second column of Table 1 displays the annual frequencies of commutations given for humanitarian reasons. There are no clear trends, but two years stand out: 1986, when five clemencies were awarded, and 1991, when there were ten.

All five of the clemencies granted in 1986 were to inmates from New Mexico. In his last few days in office, Governor Toney Anaya commuted the death sentences of the five inmates on his state's death row.³² Although the characteristics of the crime and the offender were not relevant to the commutations (since all New Mexico death row inmates were affected), we classify these as humanitarian commutations because they were motivated by the unqualified humanitarian anti-death penalty attitudes of the Governor.

The year with the highest number of humanitarian clemencies was 1991. Eight of these were granted by the outgoing Governor of Ohio, Richard Celeste.³³ Unlike the New Mexico clemencies, these commutations did not empty Ohio's death row. In fact, there were 101 Ohio death row inmates whose sentences were not commuted. The eight cases were carefully selected on the basis of their unusual facts and the life histories of the defendants.³⁴ At that time there were four women on death row in Ohio, and all four had their death sentences commuted.

Seven of the eight Ohio clemencies given by Governor Celeste (all but Beatrice Lampkin's) are being contested.³⁵ Governor Celeste's successor, George V. Voinovich, asked the Attorney General to appeal the commutation orders because Governor Celeste had allegedly not followed a rule requiring him to consult with the Ohio Adult Parole Authority before making commutation decisions.³⁶ On February 14, 1992, a Franklin County Common Pleas judge overturned the clemency decisions and ordered the seven de-

32. Governor Anaya discusses these commutations in his contribution to this symposium. See Toney Anaya, *Statement by Toney Anaya on Capital Punishment*, 27 U. RICH. L. REV. 177 (1993).

33. Kobil, *supra* note 3, at 656-57, 677-80. In the month before leaving office in January 1991, Governor Celeste actually granted 68 pardons and commutations, most in non-capital cases. *Id.* at 675.

34. See Appendix A for the relevant attributes of each case and defendant.

35. Because the State found no problems with the procedures Governor Celeste used in commuting Lampkin's sentence, her commutation was not challenged in the courts. Kobil, *supra* note 3, at 684-92; Jim Underwood, *Judge Voids Clemency for 11 Prisoners*, PLAIN DEALER (Cleveland), Feb. 14, 1992, at 1A.

36. Kobil, *supra* note 3, at 656.

pendants to return to death row.³⁷ Nonetheless, because the commutations are still being litigated and because the cases inform us about the types of situations in which at least one governor believes clemency is warranted, we retain the seven contested Ohio cases in our inventory.

IV. REASONS FOR CLEMENCY

The next step of our analysis attempts to identify the reasons for each executive clemency. In some states, such as Florida, the governor is not required to state the precise reasons for clemency,³⁸ so some speculation is necessary. To prepare the vignettes for Appendix A and to determine the reason underlying each decision, we examined appellate decisions, journalists' accounts, and, where available, transcripts of oral clemency arguments and any commutation proclamations that the governor may have issued.

Table 2 summarizes the variety of reasons that probably explain why clemency was granted in our universe of seventy cases. It begins by listing the frequency of clemency across states, indicated by the number in parentheses in the first column. It then divides the clemencies into "judicial expediency" cases (all from Virginia and Texas) and "humanitarian" clemencies. Among the humanitarian commutations, the largest number of clemencies was granted to Ohio death row inmates (eight), followed by Florida (six), New Mexico (five), Georgia (four), and Virginia (two). Bearing in mind that the Ohio and New Mexico clemencies were given because of the conscientious scruples of two governors, the paucity of clemencies becomes even more apparent. No other state has seen more than one humanitarian commutation in a post-*Furman* death penalty case. In sharp contrast to the large numbers of clemencies granted in the pre-*Furman* years,³⁹ North Carolina has since granted only one clemency, as have Louisiana, Maryland and Montana.

37. 7 *Taken Off Death Row Are Returned There*, N.Y. TIMES, Feb. 16, 1992, at 33.

38. Schimmel, *supra* note 9, at 264.

39. The data reported by Professor Bedau reveal that there were 229 commutations in North Carolina in the 46 year span, 1909-1954. Bedau, *supra* note 4, at 265.

Table 2
Reasons for Commutations of Death Sentences by State

	N*	Judicial Expediency	Humanitarian				
			Mercy	Guilt Doubtful	Mental Problem	Equity	Other
Florida	(6)			3	1	1	1
Georgia	(4)					3	1
Louisiana	(1)			1			
Maryland	(1)			1			
Montana	(1)						1
New Mexico	(5)		5				
North Carolina	(1)			1			
Ohio	(8)			1	6	1	
Texas	(36)	36					
Virginia	(7)	5		2			
Total	(70)	41	5	9	7	5	3

* Number of Clemencies

Also notable is the absence of several states from the tallies in Table 2. No commutations for humanitarian reasons have been granted in any post-*Furman* capital cases in either Texas or California, although each state has death row populations surpassing 300 and Texas leads the country with fifty-four executions in the decade preceding December 31, 1992.⁴⁰ Other states with more than 100 death row inmates in which no humanitarian commutations have been granted include Alabama (114 condemned inmates), Arizona (110), Illinois (154), Oklahoma (120), Pennsylvania (145), and Tennessee (105).⁴¹

Table 2 further divides the humanitarian commutations into five subcategories: those clemencies given because of 1) unqualified mercy, 2) lingering doubt about the defendant's guilt, 3) the defendant's mental problems that reduce blameworthiness or culpability, 4) proportionality when compared to the sentence of an equally or more culpable codefendant, and 5) other reasons.

The first subcategory of humanitarian reasons reflects clemencies commuted as an act of mercy, unqualified by any characteristics of the crime or offender. Here we place the five cases com-

40. NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., *supra* note 11, at 6.

41. *Id.* at 10, 12, 22, 31, 32, 34.

mutated by New Mexico Governor Toney Anaya; their uniqueness warrants a separate category.

Second is a subcategory of cases in which the clemency was given because of lingering doubts about the defendant's guilt. Included here are three cases from Florida (Alford, Rutledge, and Salvatore), two from Virginia (Bassette and Giarratano), and four from other states (Foster, Grant, Maynard, and Monroe). As long as states continue to use the death penalty, innocent defendants will occasionally be executed.⁴² The record shows that executive clemency often proves to be the decisive step that averts a terrible miscarriage of justice.⁴³ It remains a legitimate means of reducing the odds of fatal error.⁴⁴

The third subcategory, which can be called "blameworthiness," reflects the quasi-judicial rationale of considering mitigating circumstances, specifically the mental capacity of the individual at the time of the crime. Included here is one Florida case (Hoy), and six of the eight clemencies awarded by Ohio Governor Richard Celeste (Brown, Green, Jenkins, Jester, Maurer, and Seiber). In each, the persuasive factor leading to the grant of clemency appears to have been the defendant's mental illness or low I.Q. Hoy's attorney, for example, argued at the clemency hearing that Hoy's youth, low intelligence, and susceptibility to domination by his co-defendant tended to reduce Hoy's blameworthiness for the crime.

The fourth category, "equity," includes cases in which an equally or more culpable codefendant was not sentenced to death. Hence, the condemned inmate's sentence was commuted on the ground of equity. In Florida, it appears that Richard Gibson's death sentence was commuted because one of his accomplices was sentenced to life and two others were never prosecuted. In Ohio, Beatrice

42. RADELET ET AL., *supra* note 24, at 270-81; Hugo A. Bedau & Michael L. Radelet, *Miscarriages of Justice in Potentially Capital Cases*, 40 STAN. L. REV. 21 (1987).

43. Numerous such cases are cited in RADELET ET AL., *supra* note 24. Among them is the case of Isidore Zimmerman, whose death sentence was commuted within two hours of his scheduled execution. After serving 24 years in prison, Zimmerman was successful in proving his innocence. *Id.* at 43-55.

44. Nonetheless, inmates are still executed despite widespread belief that they might be innocent. For example, on May 18, 1992, the cover of *Time* magazine pictured Virginia death row inmate Roger Keith Coleman. Over his picture was the caption, "This Man Might Be Innocent. This Man Is Due To Die." The accompanying article detailed several holes in the state's case. Jill Smolowe, *Must This Man Die?*, TIME, May 18, 1992, at 40. Coleman was executed on May 20, 1992. Peter Applebome, *Virginia Execution Highlighted Politics of Death*, N.Y. TIMES, May 29, 1992, at B9.

Lampkin was convicted of hiring someone to murder her abusive husband, but the trigger-man was sentenced to life. In Georgia, the codefendant of Freddie Davis, although equally culpable, was sentenced to life; a codefendant of Charles Hill's was sentenced to life despite the fact that his codefendant was the trigger-man, and Harold William's accomplice (a half-brother) was convicted only of voluntary manslaughter. To the degree that one goal of the death penalty is to secure "justice," clemency can help insure that the punishment among codefendants is equitably distributed according to their culpability.

Finally, three clemencies were given for "other" reasons. In Georgia, William Neal Moore was granted clemency largely based on his rehabilitation after imprisonment. Moore's appeal for clemency was also supported by pleas for clemency from the victim's family, the Reverend Jesse Jackson, and Mother Teresa. David Keith was given clemency by Montana Governor Ted Schwinden for reasons that included Keith's partial paralysis and blindness, remorse, and religious conversion. Finally, Florida prisoner Clifford Hallman was awarded a commutation because evidence not known to his jury demonstrated that the victim died from hospital malpractice, and that his criminality was more consistent with an aggravated assault than with a homicide.

Professor Bedau lists nine reasons why clemencies have been given in capital cases.⁴⁵ We can now use our data on the seventy cases to evaluate and modify that list. In Bedau's words,⁴⁶ the nine reasons are:

1. "The offender's innocence has been established." We found no post-*Furman* cases in this category.

2. "The offender's guilt is in doubt." This category clearly includes nine of our cases; we also include the case of Clifford Hallman (which we classify as "other"). Hallman's case fits in the sense that there were doubts that he had sufficient criminal intent to be guilty of first-degree murder.

3. "Equity in punishment among equally guilty co-defendants." This category accounts for five of the post-*Furman* clemencies.

45. See Bedau, *supra* note 4, at 260-61.

46. *Id.*

4. "The public has shown conclusively albeit indirectly that it does not want any death sentences carried out." No cases in our inventory fit this description.

5. "A nonunanimous vote by the appellate court upholding a death sentence conviction leaves disturbing doubt about the lawfulness of the death sentence." We found no such cases.

6. "The statutes under which the defendant was sentenced to death are unconstitutional." Like Bedau, we include the five commutations granted by Governor Godwin in Virginia here.

7. "Mitigating circumstances affecting the death row prisoner's status warrant commutation to a lesser sentence." Here we include the seven clemencies given because of the inmates' mental problems, as well as the Montana case of David Keith.

8. "Rehabilitation of the offender while on death row." Although rehabilitation undoubtedly played a secondary role in many of our cases, the only case in which it was given as the sole or most important reason was the Georgia case of William Neal Moore.

9. "The death penalty is morally unjustified." Like Bedau, here we include the five commutations from New Mexico.

Not included as a rationale for clemency by Bedau, but clearly apparent, is a category for the commutations done out of judicial expediency in Texas. Since these cases constitute more than half of the post-*Furman* clemencies awarded in American capital cases, future work on clemencies will need to include "judicial expediency" as a relevant category.

V. CONCLUSIONS

In calendar year 1992, there were twenty-seven executions in American jurisdictions, constituting the highest yearly figure since 1962.⁴⁷ Yet, at the end of 1992 there were still some 2,700 inmates on America's death rows.⁴⁸ Simple calculations tell us that even if current execution rates were to double — to sixty a year — the present backlog of those in the queues for America's death chambers will not be eliminated until the year 2037. Clearly something has to change.

47. HUGO A. BEDAU, *THE DEATH PENALTY IN AMERICA* 25 (3d ed. 1982).

48. NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., *supra* note 11, at 1.

Easiest to change is the sluggish rate with which clemency is awarded. The data presented in this Article show that clemency in a capital case is extremely rare, particularly in light of the high number of inmates whose death row status makes them eligible for such mercy. Even under the narrow standards now being used in awarding clemency to death row inmates, there are numerous cases of inmates condemned to death who are mentally retarded,⁴⁹ mentally ill,⁵⁰ non-triggermen,⁵¹ and juveniles⁵² who are arguably deserving of clemency. Further, given ample evidence that death sentencing in America is partly a function of legally irrelevant factors such as the quality of the defense attorney⁵³ and the race of the victim,⁵⁴ as well as evidence that innocent defendants are occasionally sentenced to death,⁵⁵ the frequency of executive clemency should increase. For each case listed in Appendix A, there are many (in some instances, dozens of) similar cases of current death row or already executed inmates who have not yet received, or did not receive, executive clemency. The cases reviewed in Appendix A clearly demonstrate that clemency authorities looking for recent precedent for commuting death penalty cases can usually find it.

The patterns evident from the clemency data support the conclusion that state executives have failed to use their clemency powers to ensure that only the most blameworthy and irredeemable defendants enter the execution chambers. Clearly, the forty-one clemencies granted for judicial expediency do not satisfy the goal of justice or mercy. They were granted for purposes that suited the immediate and specific needs of the justice system itself, not because of any characteristics of the inmate.

The "governor-specific" humanitarian rationales for granting clemency also reveal the idiosyncratic nature of the use of execu-

49. PERSKE, *supra* note 20.

50. See Dorothy O. Lewis et al., *Psychiatric, Neurological, and Psychoeducational Characteristics of 15 Death Row Inmates in the United States*, 143 AM. J. PSYCHIATRY 838 (1986).

51. Douglas W. Schwartz, Note, *Imposing the Death Sentence for Felony Murder on a Non-Triggerman*, 37 STAN. L. REV. 857 (1985).

52. VICTOR STREIB, *DEATH PENALTY FOR JUVENILES* (1987).

53. Marcia Coyle et al., *Fatally Flawed*, NAT'L L.J., Nov. 19, 1990, at 1.

54. A recent review of scholarly research on this question is found in Michael L. Radelet & Glenn L. Pierce, *Choosing Those Who Will Die: Race and the Death Penalty in Florida*, 43 FLA. L. REV. 1 (1991). Professor Margaret Vandiver's article in this symposium also analyzes this issue. See Margaret Vandiver, *The Quality of Mercy: Race and Clemency in Florida Death Penalty Cases, 1924-1966*, 27 U. RICH. L. REV. 315 (1993).

55. RADELET ET AL., *supra* note 24.

tive clemency. Among the twenty-nine humanitarian commutations, seven granted in Ohio may still be rescinded, and five others are attributable solely to the personal convictions of one man, Governor Toney Anaya. These aside, we are left with only seventeen executive clemencies in capital cases in the last two decades — less than one per year — that were truly based on the characteristics of the crime or the defendant.

We conclude that the exercise of executive clemency in post-*Furman* capital cases is idiosyncratic at best, and arbitrary at worst. Overall, it seems to add, rather than subtract, an element of luck in the ultimate decision of who ends up being executed. The *Furman* decision attempted to correct the capricious element in processing capital cases at the sentencing stage. The evidence reviewed here clearly indicates that the final stage of the judicial process deserves similar reconsideration. Strong precedent is still available to executive authorities who might want to use their power to commute death sentences. But until that power is used more regularly, its crucial role in achieving both justice and mercy will remain unfulfilled.

APPENDIX A: INVENTORY OF CASES

1. *Alford, Learie Leo*. Florida. June 26, 1979. Alford was convicted on mostly circumstantial evidence of the January 1973 rape and murder of a thirteen-year-old.⁵⁶ In 1977, an eyewitness recanted the testimony he had given at trial and told the authorities that the true killer was much larger than Alford.⁵⁷ The witness had been reluctant to come forward with this information after the trial because of a fear of being charged with perjury.⁵⁸ At the clemency hearing before Florida's cabinet, the main argument made by Alford's attorney in favor of clemency was "Learie Alford did not commit the murder he was convicted of."⁵⁹

2. *Bassette, Herbert Russell*. Virginia. January 23, 1992. Despite steadfast claims of innocence and alibi testimony, Bassette was convicted in 1980 of robbing a gas station and murdering the sixteen-year-old gas station attendant.⁶⁰ The foundation of the state's case was provided by three of Bassette's companions, all of whom were drug users and convicted felons.⁶¹ Ten hours before Bassette's scheduled execution, Governor L. Douglas Wilder commuted the death sentence to life-without-parole because of doubts about Bassette's guilt.⁶² Bassette's volunteer attorneys estimated that they had spent more than \$200,000 of billable hours on the case.⁶³

3. *Brown, Debra Denise*. Ohio. January 10, 1991. Brown and a male companion, Alton Coleman, were convicted of abducting and killing a fifteen-year-old Cincinnati girl.⁶⁴ The state also argued that she was linked to at least eleven other murders and attempted murders in a five-state murder spree.⁶⁵ Brown's was among eight death sentences commuted by Governor Richard F. Celeste during

56. *Alford v. State*, 307 So. 2d 433 (Fla. 1975), *cert. denied*, 428 U.S. 912 (1976).

57. Deborah L. Ibert, *Two Get Decision on Mercy*, TALLAHASSEE DEMOCRAT, June 20, 1979, at 1A, 9A.

58. Argument on behalf of Learie Alford, Transcript of Argument for Executive Clemency at 13, April 20, 1979 (on file with authors).

59. *Id.*

60. *Bassett [sic] v. Commonwealth*, 222 Va. 844, 848-49, 284 S.E.2d 844, 847 (1981); *Bassette v. Thompson*, 915 F.2d 932 (4th Cir. (1990)).

61. Arthur Hodges, *Bassette Escapes His Date With Death*, RICHMOND TIMES-DISPATCH, Jan. 24, 1992, at 1, 2.

62. John F. Harris, *Va. Death Sentence Commuted*, WASH. POST, Jan. 24, 1992, at D1; Hodges, *supra* note 61, at 1.

63. Hodges, *supra* note 61, at 2.

64. *State v. Brown*, 528 N.E.2d 523, 529 (Ohio 1988).

65. *Id.*

his last week as governor.⁶⁶ However, a death sentence that Brown received in Indiana was unaffected. Brown's low I.Q. scores (ranging from 59 to 74) and her "master-slave" relationship with Coleman were among the reasons given for the clemency.⁶⁷

4-8. *Cheadle, David; Compton, Joel Lee; Garcia, Richard; Gilbert, William; and Guzman, Michael.* New Mexico. November 26, 1986. Five weeks before leaving office, Governor Toney Anaya commuted the death sentences of all five New Mexico death row inmates, based on the general ground of mercy and his moral stand against the death penalty.⁶⁸

9. *Davis, Freddie.* Georgia. December 16, 1988. Davis and a companion, Eddie Spraggins, were convicted of breaking into a home, raping its owner, and stabbing her to death. Both were sentenced to death. On appeal, Davis's death sentence was vacated because of erroneous jury instructions,⁶⁹ but it was reimposed after a new sentencing hearing.⁷⁰ At both trials, the main witness against Davis was Spraggins, but shortly after the second trial Spraggins began to take full responsibility for the crimes. Various appeals failed.⁷¹ In 1988, Spraggins won a new trial. He was sentenced to life imprisonment after again taking full responsibility. The next day, just forty-eight hours before Davis's scheduled execution, his death sentence was commuted by the State Board of Pardons and Paroles. The commutation was granted because the Board felt that similar degrees of culpability warranted similar punishments. One member of the Board said: "The scales of justice were just out of balance on this one."⁷²

10. *Foster, Doris Ann.* Maryland. January 20, 1987. Foster was convicted of robbing and stabbing her elderly landlady to death with a screwdriver in 1981. On appeal, a new trial was ordered,⁷³

66. *At End Of Term, Ohio's Governor Commutes Death Sentences For 8*, N.Y. TIMES, Jan. 12, 1991, at 12; Mary Beth Lane, *Celeste Commutes Eight Death Sentences*, PLAIN DEALER (Cleveland), Jan. 11, 1991, at 1.

67. Janan Hanna, *Murderer's Ally Sought By Indiana*, CHI. TRIB., Jan. 12, 1991, § 1, at 5.

68. Anaya, *supra* note 32, at 177; Robert Reinhold, *Outgoing Governor In New Mexico Bars The Execution Of 5*, N.Y. TIMES, Nov. 27, 1986, at 1.

69. *Davis v. State*, 243 S.E.2d 12 (Ga. 1978).

70. *Davis v. State*, 252 S.E.2d 443 (Ga. 1979).

71. *Id.*; *Davis v. Kemp*, 829 F.2d 1522 (11th Cir. 1987).

72. Tracy Thompson, *Panel Commutes Davis Execution to Life Sentence*, ATLANTA CONST., Dec. 17, 1988, at 1.

73. *Foster v. State*, 464 A.2d 986 (Md. 1983), *cert. denied*, 464 U.S. 1073 (1984).

but Foster was again convicted and condemned to death.⁷⁴ Governor Harry Hughes, a death penalty opponent acting on his last day in office, commuted the sentence to life with no possibility of parole because Foster's husband had confessed to the crime and there remained some lingering doubts about her guilt. The Governor commented that "no other individual in recent memory has been sentenced to death in Maryland with as many mitigating circumstances."⁷⁵

11. *Giarratano, Joseph M.* Virginia. February 19, 1991. Following a confession, Giarratano was convicted of the 1979 murders of the woman with whom he had been living and her fifteen-year-old daughter. The daughter was also raped.⁷⁶ Just three days before the scheduled execution, Governor L. Douglas Wilder granted a conditional pardon, based on reasonable doubts/probable innocence. The pardon was done in a way that commuted the sentence to life imprisonment with parole eligibility, and gave the state's attorney general the opportunity to order a new trial. It was made conditional on Giarratano's good behavior in prison, and gave him an opportunity to accept or reject it. There were contradictions in Giarratano's confession and parts of his confession did not match the crime-scene evidence. Nearly 6,000 letters had been received by Wilder's office from throughout the world asking for the clemency.⁷⁷

12. *Gibson, Richard Henry.* Florida. May 6, 1980. Gibson and three companions were involved in robbing and shooting two Brazilian seamen who were on leave in Jacksonville in 1975. One of the sailors died. At sentencing, Gibson's lawyer did not present any evidence and Gibson was sentenced to death.⁷⁸ His accomplice was sentenced to life and two women who were involved in the crime were never imprisoned.⁷⁹ These sentencing disparities were apparently the reason for the commutation.

74. *Foster v. State*, 449 A.2d 1236 (Md. 1985), cert. denied, 478 U.S. 1010 (1986).

75. Gwen Ifill, *Md. Woman's Death Term Commuted*, WASH. POST., Jan. 21, 1987, at B7.

76. *Giarratano v. Procnier*, 891 F.2d 483 (4th Cir. 1989); *Giarratano v. Commonwealth*, 220 Va. 1064, 266 S.E.2d 94 (1980).

77. Warren Fiske, *Wilder Making Political Hay*, VIRGINIAN-PILOT (Norfolk), Feb. 20, 1991, at A1, A8; Tony Germanotta, *Governor Lets Convict Decide*, VIRGINIAN-PILOT (Norfolk), Feb. 20, 1991, at A1, A8.

78. *Gibson v. State*, 351 So. 2d 948 (Fla. 1977), cert. denied, 435 U.S. 1004 (1978).

79. *Graham Commutes Gibson Sentence*, FLA. TIMES-UNION (Jacksonville), May 7, 1980, at B4.

13. *Grant, Rosalie*. Ohio. January 10, 1991. Grant was convicted in 1983 of two counts of aggravated murder and sentenced to death for killing two of her children by setting afire their Youngstown home. Shortly before the fire, she had taken out life insurance policies (payable to her) on the children's lives.⁸⁰ Grant maintained her innocence throughout the trial and Governor Richard F. Celeste found the evidence against her to be "scanty at best." In addition, Governor Celeste thought that Grant, who had given birth eleven months before the crime, may have suffered from postpartum psychosis at the time of the crime.⁸¹

14. *Green, Elizabeth*. Ohio. January 10, 1991. Green was convicted of aggravated murder and sentenced to death for the robbery-murder of a friend's neighbor. The motive was allegedly to obtain money with which to purchase cocaine.⁸² She is developmentally impaired, with an I.Q. of 66, and was abused and abandoned as a child.⁸³

15. *Hallman, Clifford*. Florida. June 26, 1979. Hallman was convicted in 1973 of slitting the throat of a barmaid with a piece of broken glass.⁸⁴ No arteries were cut, but the victim died of suffocation four days later. Hallman's attorneys argued that Hallman did not possess enough premeditation to render him guilty of first-degree murder. Furthermore, they alleged that had the victim received proper treatment at Tampa General Hospital, her death would have been prevented. Indeed, the victim's family successfully sued the hospital for \$42,500 for malpractice. The original prosecutor in the case joined the plea for clemency.⁸⁵

16. *Hill, Charles Harris*. Georgia. September 29, 1977. Hill and two codefendants were indicted in 1975 for breaking into an Atlanta home and robbing and murdering the resident.⁸⁶ Hill pleaded innocent and was sentenced to death, but the actual killer, Gary

80. State v. Grant, No. 83 C.A. 144, 1990 LEXIS 4949 (Ohio Ct. App. Nov. 9, 1990).

81. Ron Coyle et al., *Celeste Spares Life of Killer*, VINDICATOR (Youngstown, Ohio), Jan. 11, 1991, at A1.

82. State v. Green, No. C-880504, 1990 LEXIS 2798 (Ohio Ct. App. July, 1990).

83. *Stark Killer's Sentence Commuted by Celeste*, BEACON J. (Akron, Ohio), Jan. 11, 1991, at 1 [hereinafter *Stark Killer's Sentence*].

84. Hallman v. State, 305 So. 2d 180 (Fla. 1974).

85. Wayne Ezell, *Hallman is Sure He'll Get New Trial*, TALLAHASSEE DEMOCRAT, Sept. 8, 1977, at 1; Tom Fiedler, *Is He Condemned for Hospital's Error?*, MIAMI HERALD, Jan. 23, 1977, at 1; Ibert, *supra* note 57; Kevin Kalwary, *Clifford Hallman*, TAMPA TRIB., June 20, 1979, at 6A.

86. Hill v. State, 229 S.E.2d 737 (Ga. 1976).

Watts, pleaded guilty and was sentenced to life. The third perpetrator pleaded guilty to voluntary manslaughter in exchange for testifying against his partners. Both the trial judge and the prosecutor joined in Hill's plea for clemency, which was based on the disparity in sentences. It was the first post-*Furman* case decided by the State Board of Pardons and Paroles.⁸⁷

17. *Hoy, Darrell Edwin*. Florida. January 9, 1980. Hoy was convicted of participating in a rape and double murder.⁸⁸ His accomplice, Jesse Hall, was the trigger man. Hall was originally sentenced to death, but after winning a retrial he was sentenced to life imprisonment. The trial juries originally recommended life sentences for both Hall and Hoy.⁸⁹ At the clemency hearing, Hoy's attorney emphasized Hoy's youth (age 22 at the time of the crime), his low intelligence, and his susceptibility to domination by Hall.⁹⁰

18. *Jenkins, Leonard*. Ohio. January 10, 1991. Jenkins was sentenced to death for the 1981 murder of a Cleveland police officer during an aborted bank robbery. During the shoot-out, Jenkins was shot in the spinal cord, leaving him permanently paralyzed below the waist.⁹¹ Jenkins was the first person sentenced to death under Ohio's current death penalty law.⁹² In commuting the sentence, Governor Richard F. Celeste noted that Jenkins had a developmental dysfunctioning equivalent to that of a nine-year-old child, with an I.Q. of 63.⁹³

19. *Jester, Willie Lee*. Ohio. January 10, 1991. Jester was convicted of walking up to a bank guard (in a bank where Jester had formally worked), killing him with a single gunshot to the chest, and then robbing the bank. The crimes occurred in Cleveland in

87. David Morrison, *Hill Death Sentence Commuted to 99 Years*, ATLANTA CONST., Sept. 30, 1977, at 18A.

88. *Hoy v. State*, 353 So. 2d 826 (Fla. 1978).

89. Florida's death penalty law is relatively unique in that it allows judges to sentence defendants to death even after the jury has recommended a sentence of life imprisonment. See Michael Mello & Ruthann Robson, *Judge Over Jury: Florida's Practice of Imposing Death Over Life in Capital Cases*, 13 FLA. ST. U. L. REV. 31 (1985); Michael L. Radelet, *Rejecting the Jury: The Imposition of the Death Penalty in Florida*, 18 U.C. DAVIS L. REV. 1409 (1985).

90. *Of Convictions and Clemency* (editorial), CLEARWATER SUN, Jan. 2, 1980, at 8A; David Pero, *Hoy's Life Spared*, CLEARWATER SUN, June 13, 1980, at 1A.

91. *State v. Jenkins*, 473 N.E.2d 264 (Ohio 1984); *State v. Jenkins*, 536 N.E.2d 667 (Ohio Ct. App. 1987).

92. See OHIO REV. CODE ANN. §§ 2949.21-.36 (Anderson 1987 & Supp. 1991).

93. Lane, *supra* note 66, at 1; *Stark Killer's Sentence*, *supra* note 83, at 1.

1983.⁹⁴ Jester grew up in a deprived environment and suffered from multiple mental disorders and other problems that were not made known to his jury.⁹⁵ After criticizing Governor Richard F. Celeste for the commutation, former Assistant Prosecutor William E. Gerstenslager added, "If anyone should be on a commutation list, Willie [Jester] should be first."⁹⁶

20. *Keith, David Cameron*. Montana. December 29, 1988. After a guilty plea, Keith was convicted of abducting and murdering Harry Shryock in 1984.⁹⁷ Keith robbed a pharmacy and a convenience store, took a thirteen-year-old child hostage, and demanded an airplane for his getaway. The child was exchanged for Shryock, a pilot. As Shryock was trying to start the plane's engine, the police shot and wounded Keith, prompting him to murder Shryock.⁹⁸ Governor Ted Schwinden accepted a Board of Pardons recommendation and commuted the sentence to life imprisonment without parole. The reasons reportedly included Keith's partial paralysis and blindness, remorse, religious conversion, and the possibility that he may have shot Shryock in a reflex action.⁹⁹

21. *Lampkin, Beatrice*. Ohio. January 10, 1991. Lampkin was convicted and sentenced to death for hiring a man to kill her husband.¹⁰⁰ Her sentence was commuted to life because the gunman had received a life sentence, and there was evidence that the victim had abused Lampkin throughout their twenty-five year marriage.¹⁰¹

22. *Maurer, Donald Lee*. Ohio. January 10, 1991. Maurer was convicted of the 1982 abduction, sexual molestation, and murder of a seven-year-old girl and sentenced to death.¹⁰² The commutation was granted because Maurer suffered from mental illness caused by alcohol and drug abuse, and had an exemplary record of adjustment in the prison.¹⁰³

94. *State v. Jester*, 512 N.E.2d 962 (Ohio 1987).

95. *Stark Killer's Sentence*, *supra* note 83, at 1.

96. Lane, *supra* note 66, at 1.

97. *State v. Keith*, 754 P.2d 474, 475 (Mont. 1988).

98. *Id.* at 475-76.

99. Bob Anez, *David Keith Spared*, MONT. STANDARD, Dec. 30, 1988, at 1.

100. *State v. Lampkin*, No. C-890273, 1990 LEXIS 4315, at *2 (Ohio Ct. App. Oct. 3, 1990).

101. *Stark Killer's Sentence*, *supra* note 83, at A6.

102. *State v. Maurer*, 473 N.E.2d 768, 773 (Ohio 1984), *cert. denied*, 472 U.S. 1012 (1985).

103. *Stark Killer's Sentence*, *supra* note 83, at A6.

23. *Maynard, Anson Avery*. North Carolina. January 10, 1992. Maynard, a Coharie Indian, was sentenced to death for the 1981 murder of a former crime partner, who in exchange for a sentence of probation, had agreed to testify about various larcenies he had committed with Maynard.¹⁰⁴ The victim was allegedly murdered by Maynard and Gary Bullard. However, the only evidence substantiating this version of events came from the testimony of Bullard, who testified against Maynard in exchange for total immunity.¹⁰⁵ One week before the scheduled execution, Maynard's death sentence was commuted to life without parole by Governor James G. Martin. The Governor said, "Because it is not clear on the basis of all I have read and heard that Anson Maynard was not the murderer, I conclude that he should remain in prison for the rest of his life."¹⁰⁶ The defense contended that the actual murderer was a man initially charged with the murder but given immunity in exchange for his testimony against Maynard.¹⁰⁷

24. *Monroe, Ronald S.* Louisiana. August 17, 1989. Monroe was convicted of breaking into the home of his next door neighbor and stabbing her to death. After his first conviction and death sentence were remanded on appeal,¹⁰⁸ Monroe was reconvicted and resentenced to death.¹⁰⁹ The only evidence came from identifications by the victim's children.¹¹⁰ However, in 1980 the victim's husband was convicted of killing his new wife — in a manner that had several similarities to the first murder — and while serving his prison sentence he all but admitted his guilt for the crime for which Monroe had been convicted.¹¹¹ Following the recommendation of the Louisiana Pardon Board, Governor Buddy Roemer commuted Monroe's sentence to life imprisonment because of doubts about his guilt. Governor Roemer said he was convinced Monroe was guilty, but he had enough doubts about it that he could not let the execution

104. *State v. Maynard*, 316 S.E.2d 197, 200 (N.C.), *cert. denied*, 469 U.S. 963 (1984).

105. *Id.*

106. Jane Ruffin, *Martin Spares Inmate*, RALEIGH NEWS AND OBSERVER, Jan. 11, 1992, at 1.

107. *Id.*

108. *State v. Monroe*, 366 So. 2d 1345 (La. 1978).

109. *State v. Monroe*, 397 So. 2d 1258 (La. 1981), *cert. denied*, 463 U.S. 1229 (1983).

110. *Id.* at 1264.

111. Peter Applebome, *Louisiana Governor is Asked to Stop Execution*, N.Y. TIMES, Aug. 23, 1988, at 7; *Only Two Weeks to Live*, NEWSWEEK, Aug. 21, 1989, at 62, 63; Michael L. Radelet, *Don't Execute A Man Who May Very Well Be Innocent*, TIMES-PICAYUNE (New Orleans), Aug. 15, 1989, at B11.

proceed.¹¹² The Governor said: "While there is guilt for Ronald Monroe, in an execution in this country the test ought not be reasonable doubt; the test ought to be is there any doubt."¹¹³

25. *Moore, William Neal*. Georgia. August 21, 1990. Moore pleaded guilty to breaking into a home, shooting and killing its seventy-seven-year-old owner, and stealing over \$5,700.¹¹⁴ The day before his scheduled execution, the Georgia Board of Pardons and Paroles commuted the sentence to life imprisonment. In so doing, they cited Moore's exemplary prison record, remorse, religious conversion, the fact that there had been no trial, and the pleas for clemency from the victim's family. Mother Teresa and the Reverend Jesse Jackson also joined the pleas for clemency.¹¹⁵

26. *Rutledge, Jesse Raymond*. Florida. April 19, 1983. In 1974, Rutledge was convicted of breaking into a home and stabbing a woman and her three children.¹¹⁶ The woman and one child died.¹¹⁷ Rutledge consistently maintained his innocence and the evidence strongly implicated another man, who was never indicted for the crime. The sentence was apparently commuted because of doubts about Rutledge's guilt.¹¹⁸

27. *Salvatore, Michael*. Florida. May 19, 1981. Salvatore and two companions were convicted of the 1975 murder of a Miami businessman, whose body was dumped into the Gulfstream and never found.¹¹⁹ At the clemency hearing, Salvatore's attorney argued that Salvatore had nothing to do with the crime. That and the disparities in sentences between Salvatore and two others involved are the likely explanations for the commutation.¹²⁰

112. Peter Applebome, *Louisiana Governor to Spare Life of Inmate on Death Row*, N.Y. TIMES, Aug. 17, 1989, at 1; Jack Wardlaw & James Hodge, *Execution Halted by Roemer*, TIMES-PICAYUNE (New Orleans), Aug. 17, 1989, at 1.

113. Wardlaw & Hodge, *supra* note 113, at 1.

114. *Moore v. State*, 213 S.E.2d 829, 830 (Ga. 1975), *cert. denied*, 428 U.S. 910 (1976).

115. Holly Morris, *Board Spares Murderer*, ATLANTA CONST., Aug. 21, 1990, at 1; Ronald Smothers, *Day Short of Death, Convict in Georgia is Given Clemency*, N.Y. TIMES, Aug. 22, 1990, at 1.

116. *Rutledge v. State*, 374 So. 2d 975, 976 (Fla. 1979), *cert. denied*, 446 U.S. 913 (1980).

117. *Id.*

118. George Bayliss, *Convicted Slasher Wants Retrial in Hawthorne Case*, GAINESVILLE SUN, Nov. 28, 1983, at 8A; Julie Finch, *Graham Requests Review of Death Row Case*, FLORIDA FLAMBEAU (Tallahassee), Jan. 13, 1982, at 1; *Graham Commutes Rutledge's Sentence*, GAINESVILLE SUN, Apr. 20, 1983, at 6A.

119. *Salvatore v. State*, 366 So. 2d 745, 746-47 (Fla. 1978), *cert. denied*, 444 U.S. 885 (1979).

120. *Businessman's Killer Is Spared by Cabinet*, SARASOTA HERALD-TRIB., May 20, 1981, at 9B.

28. *Seiber, Lee Edward, a.k.a. "Crazy Horse."* Ohio. January 10, 1991. After being insulted in a bar, Seiber ordered four patrons to lie on the floor; when one refused, Seiber shot him in the back.¹²¹ Seiber had suffered from mental problems ever since age eleven when he sustained head injuries after being struck by a truck. This reportedly formed the basis for the commutation. Seiber, who had been in and out of psychiatric institutions, had last been treated for his psychological problems just fifteen days before the murder.¹²²

29. *Williams, Harold Glenn.* Georgia. March 22, 1991. Williams was convicted of and sentenced to death for burglary and the murder of his grandfather in 1980.¹²³ An accomplice, Williams's half-brother, Dennis, was found guilty of voluntary manslaughter and was sentenced to ten years.¹²⁴ Appeals failed.¹²⁵ In commuting the death sentence to life imprisonment, the Georgia Board of Pardons and Paroles cited the disproportional sentence received by Dennis, who by this time had taken full responsibility for the murder. The chair of the Pardons Board was quoted as saying, "There was ample evidence the co-defendant, Dennis Williams, was the ringleader in the murder."¹²⁶ Among those requesting clemency was former President Jimmy Carter.¹²⁷

121. *State v. Seiber*, 564 N.E.2d 408, 412 (Ohio 1990).

122. *Stark Killer's Sentence*, *supra* note 83, at 1; Mary Yost, *Convicted Killer Was Ready for the Electric Chair*, COLUMBUS DISPATCH, Jan. 11, 1991.

123. *Williams v. State*, 300 S.E.2d 301, 302 (Ga.), *cert. denied*, 462 U.S. 1124 (1983).

124. *Id.* at 304.

125. *Williams v. Kemp*, 846 F.2d 1276 (11th Cir. 1988), *cert. dismissed*, 489 U.S. 1094 (1989), *and cert. denied*, 494 U.S. 1090 (1990); *Williams v. Kemp*, 338 S.E.2d 669 (Ga.), *cert. denied*, 478 U.S. 1022 (1986).

126. Jingle Davis, *Ex-Marine's Death Sentence for Murder is Commuted*, ATLANTA CONST., Mar. 23, 1991, at B5.

127. *Id.*