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Jonathan R. Sorenson

James W. Marquart

Madhava R. Bodapati

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RESEARCH NOTE: TWO DECADES AFTER *PEOPLE V. ANDERSON*

*Jonathan R. Sorenson**
*James W. Marquart***
*Madhava R. Bodapati***†*

I. INTRODUCTION

In February 1972, the California Supreme Court concluded, in *People v. Anderson*,¹ that the death penalty was both cruel and unusual punishment under the California Constitution.² The court made this decision exclusive of federal constitutional concerns.³ Therefore, it was unaffected by the subsequent 1972 decision, *Furman v. Georgia*,⁴ in

* Jonathan R. Sorenson is an Assistant Professor, Department of Criminal Justice Administration, Central Missouri State University. His research interests include the legalities of drug testing in criminal justice organizations, the accuracy of jury predictions in capital cases and the history of capital punishment in Texas.

** James W. Marquart is an Associate Professor, College of Criminal Justice, Sam Houston University. His research emphasizes the long-term consequences of litigation on prison organizations. He is currently conducting a historical analysis of capital punishment in Texas from 1924-1988.

*** Madhava R. Bodapati is a doctoral student, College of Criminal Justice, Sam Houston University. His research interests include the relationship between state policy and jail overcrowding, and parole decision-making.

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1. 6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 152, *cert. denied*, 406 U.S. 958 (1972).

2. *Id.* at 656, 493 P.2d at 899, 100 Cal. Rptr. at 171. In November 1972, however, the people of California adopted a constitutional amendment by initiative declaring that the death penalty was not "the infliction of cruel or unusual punishment within the meaning of Article I, Section 6 [of the California Constitution]." CAL. CONST. art. I, § 27 (1972). The amendment was intended to overrule *Anderson* and has been held to be constitutional. *See, e.g.*, *People v. Frierson*, 25 Cal. 3d 142, 186, 599 P.2d 587, 613, 158 Cal. Rptr. 281, 307 (1979), *aff'd in part and rev'd in part*, 39 Cal. 3d 803, 705 P.2d 396, 218 Cal. Rptr. 73 (1985).

3. *Anderson*, 6 Cal. 3d at 634-40, 493 P.2d at 883-87, 100 Cal. Rptr. at 155-59. Under the doctrine of adequate and independent state grounds, a state court can shield its decision from United States Supreme Court review if the decision clearly rests on state grounds, even where a federal issue is involved, because a state may grant more rights to its citizens than provided by the federal government. *Michigan v. Long*, 463 U.S. 1032, 1037-44 (1983) (holding that lack of "plain statement" explaining that Michigan Supreme Court based its decision on state search and seizure law, allowed United States Supreme Court to review decision).

4. 408 U.S. 238 (1972). The Court found that capital punishment as applied in *Furman*, violated the eighth and fourteenth amendments to the United States Constitution. *Id.* In the two states under consideration, the court held that the judge or jury had too much discretion in deciding whether to impose the death penalty. *Id.* at 239-40.

which the United States Supreme Court held that capital punishment, as administered in *Furman*, violated the United States Constitution.⁵ Many were angered at the stance taken by the California court in the *Anderson* decision because the same issue was scheduled to be heard by the United States Supreme Court in a companion case to *Furman*.⁶ Ronald Reagan, then Governor of California, stated that the California court had made "a mockery of the constitutional processes" and had "reinforce[d] the widespread concern of our people that some members of the judiciary inject their own philosophy into their decision rather than carrying out their constitutional duty to interpret and enforce the law."⁷

This response to *Anderson* illustrates that the role of the judiciary in reviewing legislation is especially precarious in the area of the death penalty. The few scholars discussing *Anderson* commented on the role of the judiciary in reviewing legislation.⁸ The justices in *Anderson* were also very cognizant of the controversy which their decision would create, and devoted an entire section of the case to discussing the judicial function. Chief Justice Wright noted:

Our duty to confront and resolve constitutional questions, regardless of their difficulty or magnitude, is at the very core of our judicial responsibility. It is a mandate of the most imperative nature There can be no final disposition of the judicial proceedings in these cases [where 104 prisoners await death] unless and until this court has decided the state constitutional question, a question which cannot be avoided by deferring to any other court or to any other branch of government.⁹

5. *Id.* at 239-40.

6. Findley, *Reaction to the Court's Ruling*, San Francisco Chron., Feb. 19, 1972, at 2, col. 1. The United States Supreme Court was scheduled to hear *Aikens v. California*, 406 U.S. 813 (1972), a companion case to *Furman*, so people felt there was no need for the California Supreme Court to decide the issue. *Id.* See also Barrett, *Anderson and the Judicial Function*, 45 S. CAL. L. REV. 739, 743 (1972) (discussing public's hostile reaction to *Anderson*).

7. San Francisco Chron., Feb. 19, 1972, at 1, col. 3.

8. Barrett, *supra* note 6, at 739 (stating that "[t]he court was acting politically . . . rather than judicially"); Bell, *Constitutional Law—Cruel or Unusual Punishment: The Death Penalty—People v. Anderson*, 6 SUFFOLK U.L. REV. 1045, 1047-48 (1972) (observing that *Anderson* court refused to consider challenge to constitutionality of capital punishment under eighth amendment because issue was then before United States Supreme Court); Bice, *Anderson and the Adequate State Ground*, 45 S. CAL. L. REV. 750, 766 (1972) (noting that respect for state judicial decisions depends on perception that courts are not usurping powers of other branches); Hastings, *Recent Case: People v. Anderson*, 4 SW. U.L. REV. 343, 346 (1972) (asserting that court actually disapproved of *Anderson* and, contrary to what critics of *Anderson* stated, court refused to "legislate").

9. *Anderson*, 6 Cal. 3d at 640, 493 P.2d at 887, 100 Cal. Rptr. at 159.

Later that year, after the *Furman* decision relieved the pressure from the California Supreme Court, Chief Justice Wright stated his reasons for deciding the *Anderson* case:

A democratic government must do more than serve the immediate needs of the majority of its constituency—it must respect the “enduring general values” of the society. Somehow, a democracy must tenaciously cling to its long-term concepts of justice regardless of the vacillating feelings experienced by a majority of the electorate.¹⁰

This Research Note briefly describes the holding and reasoning of the court in *Anderson*. It then examines the *Anderson*-commuted death row prisoners. Who were they? How many have been paroled? How long did they serve in prison before being released to society? And, after their release to society, how many committed new crimes? Finally, this Research Note concludes that based on evidence from the two decades since *Anderson*, no adequate reason exists to support the imposition of the death penalty.

II. THE CASE

In 1965, Robert Page Anderson entered a pawn shop in San Diego, California.¹¹ Anderson, asking to examine a rifle, loaded the gun and killed one of the pawn shop employees.¹² He also attempted to kill another employee and engaged in a shootout with the police.¹³ At trial, a jury found Anderson guilty of first degree murder, attempted murder and robbery, and imposed the death penalty as punishment.¹⁴ On appeal, the case was affirmed,¹⁵ but later reversed by the California Supreme Court¹⁶ based on *Witherspoon v. Illinois*.¹⁷ A second trial was held, and Anderson again was sentenced to death.¹⁸ The case was again appealed to the

10. Wright, *The Role of the Judiciary: From Marbury to Anderson*, 60 CALIF. L. REV. 1262, 1267 (1972) (footnote omitted).

11. *People v. Anderson*, 64 Cal. 2d 633, 635-37, 414 P.2d 366, 367-69, 51 Cal. Rptr. 238, 239-41 (1966).

12. *Id.*

13. *Id.*

14. *People v. Anderson*, 6 Cal. 3d 628, 633-34, 493 P.2d 880, 883, 100 Cal. Rptr. 152, 154-55, cert. denied, 406 U.S. 958 (1972).

15. *Anderson*, 64 Cal. 2d at 642, 414 P.2d at 372, 51 Cal. Rptr. at 244.

16. *In re Anderson*, 69 Cal. 2d 613, 634, 447 P.2d 117, 131, 73 Cal. Rptr. 21, 35 (1968), cert. denied, 406 U.S. 971 (1972).

17. 391 U.S. 510 (1968). The court in *Witherspoon* held that the prosecution may dismiss prospective jurors with cause who admit they would be unable to impose the death penalty, even though the penalty is required by law. *Id.* at 520.

18. *Anderson*, 6 Cal. 3d at 633, 493 P.2d at 883, 100 Cal. Rptr. at 155.

California Supreme Court.¹⁹

The first issue the California Supreme Court addressed in Anderson's second appeal was the standard used to judge the constitutionality of capital punishment.²⁰ The court noted that article I, section 6 of the California Constitution used the disjunctive form, prohibiting punishment that is either cruel *or* unusual.²¹ This differs from the eighth amendment to the United States Constitution, which prohibits punishment that is both cruel *and* unusual.²² The court ruled on the constitutionality of the death penalty under the state constitution.²³ Using this disjunctive form, if capital punishment is found to be either cruel or unusual, the court noted, it is unconstitutional.²⁴

In determining if the punishment was indeed cruel, the court first noted that "cruel or unusual" does not have a static definition.²⁵ Instead, the court stated that the California Constitution is a progressive document,²⁶ and that acceptable punishment must be measured by "the evolving standards of decency that mark the progress of a maturing society."²⁷ The *Anderson* court noted that forty-one state constitutions contained provisions for capital punishment, and public opinion polls showed that the majority of the public supported capital punishment.²⁸ The court reasoned, however, that the decreasing frequency of executions across the country was evidence that capital punishment had fallen below the standard of decency in modern society.²⁹ The court also noted that the "brutalizing psychological effects" caused by lengthy delays between conviction and execution was further evidence of the cruelty of this punishment.³⁰ Concessions by the prosecutors in *Anderson* that capital punishment was indeed cruel, but that it was not "unnecessarily cruel," did

19. *Id.*

20. *Id.*

21. *Id.* at 633, 493 P.2d at 883, 100 Cal. Rptr. at 155 (citing CAL. CONST. art. I, § 6 (1879, amended 1974)). The California Constitution was amended in 1974 and the prohibition against cruel or unusual punishment is now located in article I, section 17. CAL. CONST. art. I, § 17.

22. *Anderson*, 6 Cal. 3d at 634 n.3, 493 P.2d at 883 n.3, 100 Cal. Rptr. at 155 n.3 (citing U.S. CONST. amend. VIII).

23. *Id.* at 634, 493 P.2d at 883, 100 Cal. Rptr. at 155.

24. *Id.*

25. *Id.* at 648, 493 P.2d at 893, 100 Cal. Rptr. at 165.

26. *Id.*

27. *Id.* at 647, 493 P.2d at 893-94, 100 Cal. Rptr. at 165 (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)).

28. *Id.*

29. *Id.* at 649, 493 P.2d at 894, 100 Cal. Rptr. at 166.

30. *Id.* at 650, 493 P.2d at 895, 100 Cal. Rptr. at 167.

not fare well with the court.³¹ The court did not address whether protection under the California Constitution was limited to an “unnecessarily cruel” standard, but held that capital punishment did not serve any of the four purposes of punishment.³²

The court next determined whether the punishment was unusual by contemporary worldwide standards.³³ After noting the worldwide movement toward abolition of the death penalty, and the decreasing number of executions in this country, the court concluded that capital punishment was “unusual” among civilized nations.³⁴

Even though the court decided the case on state constitutional grounds, which prohibit any punishment that is either cruel *or* unusual, the California Supreme Court found the death penalty to be both cruel *and* unusual punishment in *Anderson*.³⁵ While the United States Supreme Court did not agree that the punishment *in itself* was cruel and unusual,³⁶ the Court did find, four months later in *Furman v. Georgia*,³⁷ that the arbitrary and capricious administration of capital punishment, constituted cruel and unusual punishment in violation of the eighth amendment.³⁸

III. METHODOLOGY

To identify the *Anderson*-commutees, the California Department of Corrections (CDC) prepared a list of 107 inmates on death row at the time of *Anderson*.³⁹ After receiving the list, we re-contacted the CDC to obtain updates of the former capital prisoners. The necessary research agreements were signed and our project was then officially approved. Once approved, Mr. Robert Dickover, Chief, Research Branch in the CDC, provided the researchers with the following information on the prisoners:

1. Current status (e.g., still incarcerated, deceased, on parole);

31. *Id.* at 651, 493 P.2d at 895, 100 Cal. Rptr. at 167.

32. *Id.*, 493 P.2d at 896, 100 Cal. Rptr. at 168. The four purposes of punishment are: (1) rehabilitation, (2) retribution, (3) isolation of the offender, and (4) deterrence of crime. *Id.*, 493 P.2d at 895-96, 100 Cal. Rptr. at 167-68.

33. *Id.* at 653-56, 493 P.2d at 897-99, 100 Cal. Rptr. at 169-71.

34. *Id.*

35. *Id.* at 633, 493 P.2d at 883, 100 Cal. Rptr. at 155.

36. *Furman v. Georgia*, 408 U.S. 238, 243 (1972).

37. 408 U.S. 238 (1972).

38. *Id.* at 239-40.

39. California Department of Corrections, Unpublished data from Division of Institutional Research (1990) [hereinafter CDC Data] (available at Loyola of Los Angeles Law Review).

2. Recidivism data of those released (e.g., technical violations, new felonies);
3. Previous felony convictions of those released.

Once the data was assembled, it was computerized for analysis.⁴⁰

IV. ANALYSIS OF RECIDIVISM AMONG *ANDERSON*-COMMUTED INMATES

The public was fearful after the decision in *People v. Anderson*⁴¹ for two reasons. First, some thought that abolition of capital punishment left the criminal justice system without a real deterrent, thereby facilitating future murders.⁴² Second, the public feared the release of many infamous criminals.⁴³ Among those affected by *Anderson* were such notorious criminals as Sirhan Sirhan and Charles Manson.⁴⁴ Have these former murderers and death row inmates posed the threat to society that many believed they would?

Studies of the recidivism of violent offenders indicate that a recurrence of violence is rare.⁴⁵ Additionally, studies of murderers in general have found their rates of committing new offenses to be very low.⁴⁶

The research examining the behavior of capital offenders commuted by the *Furman v. Georgia*⁴⁷ decision in both Kentucky⁴⁸ and Texas⁴⁹ have made similar discoveries.⁵⁰ These analyses are different from the

40. *Id.*

41. 6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 152, *cert. denied*, 406 U.S. 958 (1972).

42. *See* Findley, *supra* note 6, at 2, col.3.

43. *Id.* col. 5.

44. Draper, *The Death Row Inmates*, San Francisco Chron., Feb. 19, 1972, at 2, col. 1; *see also* *People v. Sirhan*, 7 Cal. 3d 710, 717, 755, 497 P.2d 1121, 1125, 1151, 102 Cal. Rptr. 385, 389, 415, (1972) (death sentence modified to life imprisonment as a result of *Anderson*), *cert. denied*, 410 U.S. 947 (1973), *overruled on other grounds in* *Hawkins v. Superior Court*, 22 Cal. 3d 584, 586 P.2d 916, 150 Cal. Rptr. 435 (1978); *People v. Manson*, 61 Cal. App. 3d 102, 216, 132 Cal. Rptr. 265, 336 (1976) (death penalty verdict nullified as a result of *Anderson*), *cert. denied*, 430 U.S. 986 (1977).

45. U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, RETURNING TO PRISON 3 (1984) [hereinafter *Wallerstedt Study*] (study of recidivism by John F. Wallerstedt, Ph.D, showing murderers have second lowest recidivism rate); J. COKER & J. MARTIN, LICENSED TO LIVE 95-97 (1985); T. SELLIN, THE PENALTY OF DEATH 103-20 (1980).

46. *Wallerstedt Study*, *supra* note 45, at 3. Additionally, the rate of new homicides among released first-degree murderers tends to be about one percent. Early studies of commuted capital offenders also noted the rarity of a second homicide. *Id.* at 4.

47. 408 U.S. 238 (1972).

48. Vito & Wilson, *Back From the Dead: Tracking the Progress of Kentucky's Furman-Commuted Death Row Population*, 5 JUST. Q. 101 (1988).

49. Marquart & Sorensen, *Institutional and Postrelease Behavior of Furman-Commuted Inmates in Texas*, 26 CRIMINOLOGY 677 (1988) [hereinafter *Furman-Commuted Inmates*].

50. *Id.* at 680-89; Vito & Wilson, *supra* note 48, at 105-09.

earlier commutation studies because the offenders studied more recently include a cross-section of the death row inmate population, whereas traditional examinations focused on pardoned murderers who were often selectively determined to be "more deserving" and less likely to repeat such crimes.⁵¹ To date, one of the more comprehensive analyses of the behavior of capital offenders released by a court decision was the national study of *Furman*-commuted inmates reported in November 1989.⁵² The *Furman* study found that of the nearly six hundred inmates tracked over a fifteen-year period after commutation, only seven committed homicides, six while in prison, and one while on parole.⁵³

In February 1972, there were 107 murderers on California's death row.⁵⁴ According to the CDC data,⁵⁵ the average age of offenders at the time of the *Anderson* commutation was thirty-three, the youngest offender was twenty-two and the oldest was sixty. Nearly half, 46.3%, were in their twenties, while 31.6% were in their thirties, and 22.1% were over age forty. Two-thirds (66.7%) of the offenders were white, 26.7% black, 4.8% Hispanic, and 1.9% belonged to other races.⁵⁶ Additionally, five of the death row inmates were female and the remaining 102 were male.

Of these 107 commutees, two prisoners had been on death row since 1964, five since 1965, seven since 1966, eight since 1967, fifteen since 1968, thirteen since 1969, thirty-four since 1970, twenty since 1971, and three since 1972.⁵⁷ These death row inmates spent an average of nearly three years on death row before commutation. Since commutation, the *Anderson*-commutees have spent an average of thirteen years in prison over the eighteen-year period from 1972 to 1989. Just under half (fifty-two) of the inmates are still incarcerated, and have never been released from confinement. Twelve others died in prison. One of the forty-one inmates who have been released from prison, through parole or straight discharge, died a year after release.

Figure 1 illustrates the number of inmates paroled by year.

51. For a discussion of these traditional examinations see Marquart & Sorensen, *A National Study of the Furman-Commuted Inmates: Assessing the Threat to Society From Capital Offenders*, 23 LOY. L.A.L. REV. 5, 8-10 (1989) [hereinafter *A National Study*].

52. *Id.* at 5. For a collection of articles on the death penalty see generally, *Symposium: The Death Penalty Approaches the 1990's: Where Are We Now?*, 23 LOY. L.A.L. REV. 1 (1989).

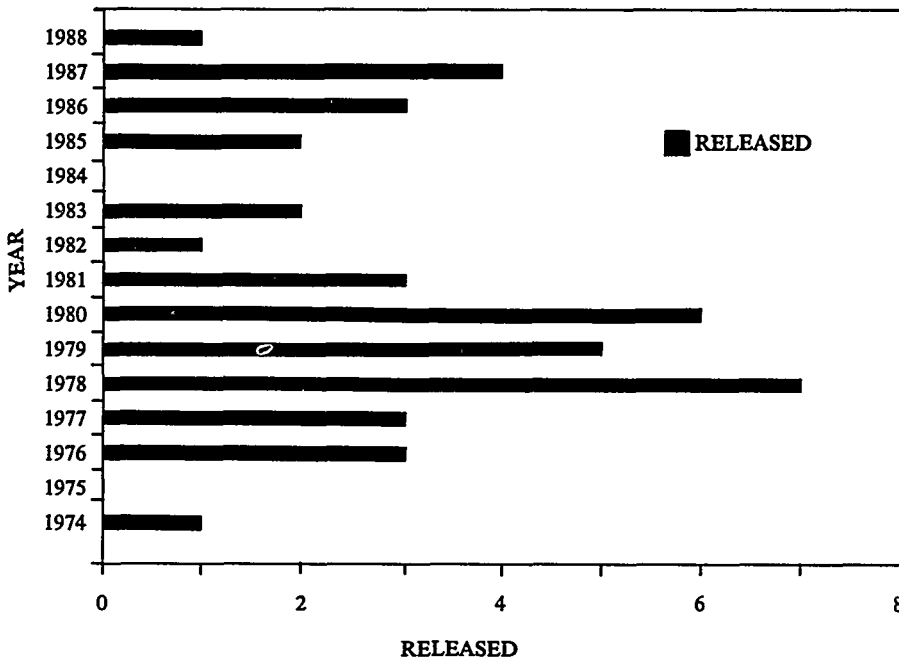
53. *A National Study*, *supra* note 51, at 20-25.

54. See CDC Data, *supra* note 39.

55. *Id.*

56. This includes one American Indian and one Filipino. The race of two of the inmates was not listed in the data collected. *Id.*

57. *Id.*; see also *Anderson*, 6 Cal. 3d at 649 n.37, 493 P.2d at 894 n.37, 100 Cal. Rptr. at 166 n.37.

FIGURE 1, RELEASES BY YEAR⁵⁸

As indicated in Figure 1, the first inmate was paroled in 1974. The peak year for release was 1978, when seven former capital offenders were released from confinement. Five inmates were released in 1979, followed by six in 1980. Nearly half of all the offenders released from confinement were released during this three-year period from 1978 to 1980.

The forty-one released inmates have spent an average of six years and eight months in the free community. The crucial question is: If the *Anderson*-commuted inmates had been executed, how many crimes against citizens would have been prevented? Table 1 compares the recidivism rate⁵⁹ of the *Anderson*-commuted murderers⁶⁰ to the *Furman*-commuted murderers⁶¹ who have been released from prison.

Of the forty-one released offenders, 36.6% (fifteen) were returned to prison for new offense convictions or technical violations. Thus, the *Anderson*-commuted murderers recidivated at a higher rate than the *Furman*-commuted murderers. The reason for this higher recidivism

58. See CDC Data, *supra* note 39.

59. While many measures of recidivism exist, we chose to use conviction for a new felony or misdemeanor, or return to prison for a technical violation, as indicators of recidivism.

60. See CDC Data, *supra* note 39.

61. See *A National Study*, *supra* note 51, at 22-26.

TABLE 1
COMPARISON OF THE RECIDIVISM OF THE *ANDERSON*- AND
FURMAN-COMMUTED MURDERERS

Release Outcome	<i>Anderson</i> -Commutees	<i>Furman</i> -Commutees*
Total Released	41 (38.3%)	188 (43.4%)
Mean Time in Community	6.7 years	5.3 years
Recidivated	15 (36.6%)	38 (20.2%)
Technical Violations	3 (7.3%)	15 (8.0%)
Misdemeanor	2 (4.9%)	3 (1.6%)
New Felony Offense	10 (24.4%)	20 (10.6%)
Murder	1	1
Rape	1	0
Robbery	1	4
Aggravated Assault	3	1
Burglary	0	4
Larceny-theft	0	3
Possession of Firearms	1	2
Drugs	3	4
Indecency with a child	0	1

*To keep the group comparable, we included only the *Furman*-commuted murderers, and excluded the rapists and armed robbers.

rate is probably the longer follow-up period⁶² for the *Anderson*-commutees which was over a full year longer than the *Furman*-commutees.

The average (mean) time out of prison before the *Anderson* commutees recidivated was three years. Nine of the fifteen offenders, however, recidivated within twenty months after their release. One inmate was out nearly eight years before returning. Table 1 also indicates the type of recidivism, new convictions or return to prison for a technical parole violation. Six of the recidivating offenders were given probation, suspended sentences, jail time or fines. The remaining nine were reincarcerated. Of these nine, two have been re-released to the community. Violent crimes committed by the *Anderson*-commutees include three aggravated assaults (one with attempted murder), one aggravated robbery, one aggravated rape, and one capital murder. The person convicted of capital murder is currently on California's death row.

This analysis reveals that the commutees committed additional acts of violence after being released to society. Was their rate of recidivism disproportionate to that of murderers in general? The answer to this

62. The follow-up period is the amount of time a commuttee spent in the free community before being studied.

question is a qualified "no." Comparing recidivism rates across studies is very difficult because many measures of recidivism exist.⁶³ Further, the follow-up period of recidivism studies vary.

Table 2 compares the recidivism of the *Anderson*-commuted murderers to other studies measuring murderers' rates of recidivism.

TABLE 2
 RECIDIVISM RATES OF THE *ANDERSON*-COMMUTED
 MURDERERS COMPARED WITH PREVIOUS
 RESEARCH

Study	Outcome Definitions	Recidivism Rate
<i>Anderson</i> -Commutees	Conviction for:	
	- New Offense	29.3%
	- Violation	7.3%
Coker and Martin	Commission of a New Offense	28.1%
Sellin	Reincarcerated for New Offense	4.5%
Stanton	Reincarcerated for:	
	- New Offense	8.8%
	- Violation	11.6%
Wallerstedt	Reincarcerated for either New Offense or Violation	29.0%

Each study presented in Table 2 used a different measure of recidivism and a different follow-up period. The Coker and Martin study tracked the behavior of 231 discharged murderers in England over a period ranging from five to nineteen years.⁶⁴ Their measure of recidivism was the commission of a new offense as recorded in parole files, even if the parolee was not convicted of the offense or returned to prison.⁶⁵ The Coker and Martin study is more similar to those presented in Table 1, considering a follow-up period of varying years and the measure of recidivism as the occurrence of a new offense.⁶⁶ Not surprisingly, the rates of recidivism therefore are similar.

63. For example, commission of a new offense, arrest for a new offense, conviction for a new offense (felony or misdemeanor) or return to prison.

64. J. COKER & J. MARTIN, *supra* note 45, at 80.

65. *Id.* at 92.

66. *Id.* at 80.

The other studies use reincarceration, either for a new offense, technical violation, or both, as a measure of recidivism.⁶⁷ Sellin reported results of a three-year follow-up study of 6,835 male willful homicide convicts paroled from 1969 through 1973.⁶⁸ He found only a 4.5% reincarceration rate for new offenses.⁶⁹ Stanton examined the behavior of 577 first and second degree murderers released from prison in New York from 1930 through 1961 and found a 20.5% reincarceration rate during follow-up periods varying from zero to thirty years.⁷⁰ Wallerstedt reported the median reincarceration rate of 22.6% for homicide offenders in several states over varying time periods.⁷¹ As also indicated in Table 2, those studies that defined recidivism as reincarceration rather than commission of a new offense, found a slightly lower rate of recidivism.⁷²

V. CONCLUSION

From this brief look at the *Anderson*-commuted inmates, one may draw either of two conclusions. The first is that the *Anderson* court should never have released these offenders to society. As a result of the decision to commute, one offender killed again, another raped, another robbed and others assaulted people in the free society. The second conclusion, however, is that although a few brutal acts were committed by a minority of the *Anderson*-commutees, these acts have been no more numerous or violent than those committed by other murderers released from prisons across America every day. It is the second conclusion that is supported by the evidence. While violence tends to be a patterned behavior for some individuals, recurrences of serious violence, such as homicide, are a rarity, not the norm.

67. T. SELLIN, *supra* note 45, at 115; Stanton, *Murderers on Parole*, 15 CRIME & DELINQ. 149 (1969); Wallerstedt Study, *supra* note 45, at 1.

68. T. SELLIN, *supra* note 45, at 115.

69. *Id.* at 114.

70. Stanton, *supra* note 67, at 150 (finding recidivism rate of 4.76% for first degree murderers and 22.4% for second degree murderers).

71. Wallerstedt Study, *supra* note 45, at 3.

72. *Id.* at 5-6.

