FOREWORD

In our first article, Professor Jeffrey L. Kirchmeier examines the recent decline in support for the death penalty in the United States and the resulting emergence of a movement to impose a moratorium on executions. After discussing the history of the death penalty abolition movement in the United States, he identifies five major and seven minor "events" that have contributed to the growth of the Death Penalty Moratorium Movement. Then, he compares the current Moratorium Movement to other similar reform periods: the 1960s Death Penalty Abolitionist Movement; legislative abolition of the death penalty in several states during the mid-1800s and early 1900s; death penalty abolition in other countries; and the Anti-Lynching Movement of the early 1900s.

Based on the history of these other movements, Professor Kirchmeier discovers various lessons for today's Moratorium Movement, including lessons about strategy and the roles of public opinion and leadership. Using these lessons from history and looking at recent events, he considers the future of the Moratorium Movement. Professor Kirchmeier reasons that for the Movement to continue to be successful: (1) there must be no major national distracting forces; (2) the Movement must continue to broaden its arguments and not be overly dependent upon one issue, one person, or one strategy; (3) the Movement must continue seek support from unexpected voices; and (4) the Movement must stay focused on the goals of achieving popular support and creating new leaders. Finally, Professor Kirchmeier concludes that the Moratorium Movement is strong enough to continue to have lasting effects.

In our second article, Professor Edward Adams asserts that full circle evaluations remove obstacles to the advancement of women in the workplace, not by excluding the participation of men, but by increasing the participation of the entire organization. While women are well represented in the workforce, they continue to have difficulty breaking into the male corporate world because of entrenched gender bias. In *Using Evaluations to Break Down the Male Corporate Hierarchy: A Full Circle Approach*, Professor Adams describes full circle evaluations and explains the benefits associated with the use of such systems. In contrast to traditional top-down performance

appraisals that rely only on supervisor feedback, full circle evaluations depend on data from many people throughout the organization—supervisors, peers, and subordinates. Professor Adams argues that full circle evaluation systems have the potential to provide significant benefits to those corporations choosing to implement them, and if these economic benefits are substantiated, corporate directors may be required to implement full circle evaluations in order to fulfill their duties of care and loyalty to shareholders. In addition to helping companies succeed in the new economy, full circle evaluations ensure that all employees, regardless of their gender, are properly reviewed, compensated, and promoted.

In our third article, Professor Michael Blumm criticizes the decision of the Idaho Supreme Court rejecting reserved water rights for wilderness areas in that state. Professor Blumm highlights the conflicts between federal reserved water rights and state systems of prior appropriation, which helps explain the hostile reception that federal reserved water rights have received in most state courts. He then analyzes the decisions of the Snake River Basin Adjudication (SRBA) court, which held that there was a federal reserved right for all the unappropriated water in three Idaho wilderness areas, and the Idaho Supreme Court, which initially affirmed the SRBA court. However, due to a tidal wave of opposition to this result, the Idaho Supreme Court agreed to rehear the case. Meanwhile, the author of the court's initial decision, Justice Cathy Silak, was soundly defeated after her opponent made her opinion in the wilderness case a major campaign issue. After the election, Chief Justice Linda Copple Trout (due to face the voters the following year) switched her position, enabling the court to produce a 3-2 decision that rejected the existence of reserved water rights for wilderness areas. In so doing, the new majority construed the purposes of the Wilderness Act extremely narrowly, and wholly ignored the fish, wildlife, and watershed purposes of the specific statutes creating two of the Idaho wilderness areas. Chief Justice Trout's concurring opinion even suggested that implied reserved water rights were no longer possible after Congress was made aware of the potential conflict between reserved rights and state water law. According to this "awareness" theory, reserved rights must now be express. If adopted by other courts, this approach would effectively overturn the *Winters* doctrine of implied reserved rights.

Professor Blumm points out that although the Idaho Supreme Court ruled that Idaho wilderness areas possess no federal water rights, the court could not produce a majority opinion explaining why this is so. In particular, Chief Justice Trout's "awareness" theory is a minority opinion. Professor Blumm maintains that the Idaho Supreme Court disregarded several provisions of the Wilderness Act, ignored the purposes of the statutes authorizing the Idaho wilderness areas, and failed to follow United States Supreme Court precedent regarding the irrelevance of apparent economic effects in determining the existence of reserved water rights. In so doing, the Idaho court acted in a legislative capacity, responsive to the obvious political pressure imposed by the Silak re-election. He doubts that this type of judicial activism will serve Idahoans well in the long run. Ironically, Idaho wilderness may incidentally benefit from another ruling of the Idaho Supreme Court, which held—on the same day it rejected wilderness water—that federal wild and scenic rivers in the state possessed reserved water rights because of an express provision of the Wild and Scenic Rivers Act.

In our first comment, the author addresses the question of who should decide whether criminals should receive the death penalty. The author provides an in-depth analysis of Colorado's three-judge panel approach to capital sentencing. The comment outlines various viewpoints concerning the propriety of Colorado's approach. The author addresses whether the approach has increased consistency in capital sentencing by examining the decisions of three-judge panels to date. The author then provides an insider's view of the three-judge panel system by setting forth the results of an informal survey of judges and trial lawyers who have participated in the panels. The author concludes with recommendations to improve Colorado's three-judge panel procedure. The comment takes an unbiased view of the three-judge panel approach, enabling the reader to make his or her own informed determination regarding the efficacy of the panel.

In our second comment, the author looks at a trial strategy called the All-or-Nothing Doctrine, which is a failure of the parties in a criminal trial to request any lesser-included offenses. As a result, the jury has a simple choice: guilt or innocence of the sole charged offense. The United States Supreme Court, in *Beck v. Alabama*, held that the All-or-Nothing Doctrine is un-

constitutional in capital cases because of the risk that the jury might forego the "beyond a reasonable doubt" standard and convict a defendant solely because they feared setting him free entirely. The Court limited its holding in *Beck* to capital cases, and only the Third Circuit and nine state supreme courts have held that lesser-included offenses must be given in non-capital cases. The author concludes that the strategic use of the All-or-Nothing Doctrine in criminal trials is an improper trial strategy because it diminishes the integrity and reliability of trial results by not giving the jury the full range of available charges. He argues that because it appears unlikely that the Supreme Court will extend its reasoning in *Beck* to non-capital cases, state legislatures should adopt a statutory solution to this problem. The author concludes by proposing a model statute that would abolish the All-or-Nothing Doctrine, thereby ensuring the integrity and reliability of the criminal trials in any given jurisdiction.

THE EDITORS