

## ... who gets executed

Nearly half of those executed since 1976 have been people of color, with blacks alone accounting for 35%. All told, 82% have been put to death for the murder of a white person. Only 1.8% were white people who had been convicted of killing people of African, Asian, or Latin descent. Meanwhile, people of color are the victims in *more than half* of all homicides.

Since 1930, one in two persons executed was black. Additionally, from the Civil War to the civil rights movement, approximately 5,000 black men were lynched.

## Law and order politics vs. racial justice

The death penalty has become a mainstay of the American political diet. The courts, along with Congress and the President, continue to ignore the prevalence of racial bias.

### *The Courts*

In the landmark 1987 case, *McClesky v. Kemp*, the U.S. Supreme Court was presented with Baldus' study of racial bias in Georgia. The Court accepted Baldus' data as valid, but refused to deal with *institutional racism*. It concluded, in the majority opinion written by Justice Lewis Powell, that "taken to its logical conclusion, [*McClesky*] throws into serious question the principles that underlie our entire justice system." Georgia executed Warren McClesky in 1991. That same year, Justice Powell confessed that his vote to uphold the death penalty in *McClesky* was his greatest regret.

The highest U.S. court has not only turned its back on racial bias in the death penalty – it has gone on, to quote Justice Blackmun, to "deregulate the entire enterprise." In a series of rulings since 1991, the Court has drastically restricted the rights of death row prisoners to challenge their convictions and sentences in federal courts – even in instances where prisoners presented compelling evidence of innocence!

### *Congress and the President*

Congress and the President also have refused to remedy the racism inherent in death penalty sentencing. Though the Racial Justice Act (RJA) has been introduced four times, Congress has yet to pass it. The RJA would allow prisoners to challenge their death sentences using standards normal in civil racial-discrimination cases.

Thanks largely to the Congressional Black Caucus, a weak version of the RJA was passed by the House in 1994, but the measure never reached the Senate. A final bill signed by President Clinton expanded the federal death penalty from two to 60 crimes and established procedures for resuming federal executions.

Then, in 1996, Congress passed and Clinton signed the Antiterrorism and Effective Death Penalty Act. The law drastically limits federal court review of death row appeals. At the same time congress gutted public funding of legal aid services for death row prisoners – which, for most, offer their only legal representation.

## Racism and the overall system

Prison demographics are similar to those of death row. Two-thirds of all state and federal prisoners are people of color. Blacks are 8.2 times more likely to be imprisoned than whites. The U.S. has long incarcerated more people of African descent per capita than any other nation in the world, including South Africa under apartheid.

Sources available on request. December 2000

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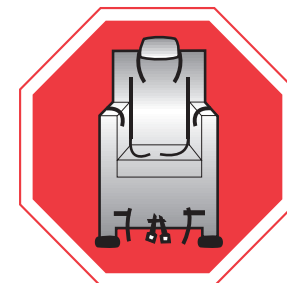
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# MORATORIUM Now!

Not one more execution!



"... the American people are largely unaware of the information critical to a judgment on the morality of the death penalty... if they were better informed they would consider it shocking, unjust and unacceptable."

– the late Justice Thurgood Marshall  
*Furman vs Georgia, 1972*

# How Racism Riddles the U.S. Death Penalty

In 1972, the U.S. Supreme Court struck down virtually all death sentences in the land because it found them to be inconsistent and profoundly unfair (*Furman v. Georgia*). In a splintered 5-4 decision, each Justice wrote his own opinion. Many cited evidence of racial bias.

Four years later, in *Gregg v. Georgia*, the Court upheld a new generation of capital statutes that promised equal justice.

Today, 38 states have the death penalty. Over 5,000 people have been sentenced to death since *Gregg* and 682 executions have been carried out – nearly three quarters in the past decade.

Despite the Court's assurances of equity, bias – racial bias in particular – remains at the death penalty's core. U.S. Supreme Court Justice Harry Blackmun, who had sided with the majority in *Gregg*, concluded in the 1994 decision *Callins v. Collins* that this 20-year “death penalty experiment has failed.” Racism was central to Blackmun's determination:

*“Even under the most sophisticated death penalty statutes, race continues to play a major role in determining who shall live and who shall die.”*

## Race influences . . .

A 1990 U.S. General Accounting Office report revealed “a pattern of evidence indicating racial disparities in charging, sentencing and imposition of the death penalty.” In its 1997 call for a moratorium on executions, the American Bar Association concluded that “racial discrimination remain[s] in courts across the country.”

### . . . who gets charged

The local District Attorney (D.A.) makes the decision to pursue a death sentence. A 1998 Death

Penalty Information Center report reveals that 98% of the D.A.s in death penalty states are white.

On the federal level, the pattern of racial bias in capital prosecutions is striking. A recent Justice Department study of federal capital cases from 1995 to 2000 found that 74% of the defendants were people of color. Upon release of the study, Attorney General Janet Reno said she was “sorely troubled” by such stark racial disparities.

The race of the victim and the defendant inevitably influences the decision to seek a death sentence. University of Iowa law professor David Baldus conducted an exhaustive criminal sentencing study in Georgia in the 1980s. He found that prosecutors sought the death penalty for 70% of black defendants with white victims, but only 15% of black defendants with black victims. Similar patterns of racial bias are found across the country.

Racism also infects jury selection. In March 1997, Philadelphia's D.A. released a 1986 training video in which D.A. candidate Jack McMahon instructs Philadelphia prosecutors to exclude blacks from juries to increase the chances of a conviction. Although outlawed by the U.S. Supreme Court in 1986 in *Batson v. Kentucky*, such exclusion remains commonplace throughout the U.S.

### . . . who gets a death sentence

Over half of those on death row are people of color. Black men alone make up over 42% of all death row prisoners, though they account for only 6% of people living in the U.S.

Racial inequity is found not just in the South, where most U.S. executions are taking place. According to a study done by David Baldus and George Woodworth, blacks in Philadelphia are *four times* more likely to get the death penalty than other defendants who commit similar murders. Philadelphia has put 133 people on death row –

more than most southern states. Over 89% of these prisoners are people of color.

Nationwide, cases involving a white victim and a defendant of color are most likely to result in a death sentence. The Baldus study found that six out of ten defendants sentenced to death in Georgia for killing a white person would not have received a death sentence had their victim been black. A white victim case was *over four times* more likely to result in a death sentence than was a comparable black victim case. In Maryland – the state with one of the highest percentages of African Americans on death row – a death sentence is *eight times* more likely in a white victim case than a black victim case, according to a 1987 Public Defender's Office study.

The first legal challenge to racial bias in a jury's decision to impose the death penalty was filed with the New Jersey Supreme Court in 1996. Using data collected by the state's Administrative Office of the Courts, defendant Donald Loftin demonstrated that jurors in New Jersey are *ten times* more likely to sentence a black defendant to death than a white defendant. Further, the study reveals that the defendant's race has *more* impact on juries than other factors, such as a police officer victim, a murder-for-hire, or a murder including mutilation. Loftin had asked the state Supreme Court to overturn his death sentence and to halt capital prosecutions and executions until the impact of race can be studied further. The court rejected Loftin's appeal but has authorized further research.

Only the most blatant racial discrimination seems to get relief. In the 2000 case of *Saldano v. Texas*, the U.S. Supreme Court overturned the death sentence of Victor Saldano because the prosecutor's expert witness used Saldano's *race* as one of 24 factors that would warrant a death sentence.

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**Equal Justice Under Law?  
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