

Fair and Equal Under the Law?

Geography, race, and the death penalty

Just one percent of murders in the United States have resulted in a death sentence over the last decade. But are those individuals truly the “worst of the worst” – or simply those with the worst lawyers, the wrong geographic location, or the wrong skin color?

We all expect justice to be blind. Otherwise it’s not justice at all. Yet geography, poverty, and race continue to determine who lives and who dies. When the public sees this level of disparity in the death penalty, it compromises the integrity of the entire criminal justice system, sending a message that some lives are more valuable than others.

A Lottery of Geography

- ◆ Where a crime occurs can play as big a role as the nature of the crime in determining who will live and who will die. Convictions might get 40 years in one county and death in the next county over.
- ◆ Many states, like Ohio, California, Indiana, and Florida, have a large percentage of death sentences originate from just one or two counties.
- ◆ Geography plays a role nationally as well. Just two percent of the counties in the U.S. have been responsible for the majority of the nation’s death sentences and executions.

“Being selected as a defendant for a capital case is as random and serendipitous as being struck by lightning.”

– Robert DeLufo, former Attorney General of New Jersey

Biased and Arbitrary

- ◆ Individual prosecutors have broad discretion to decide when to seek the death penalty. Such discretion is one of the hallmarks of our nation’s legal system. But the definition of “death eligible” is so broad that there is little guidance for prosecutors to make that decision. That leaves room for bias and other factors to seep into the decision making process, despite a prosecutor’s best intentions.
- ◆ Many of the nation’s most high-profile murder cases don’t result in a death sentence because the defendants can afford better lawyers who negotiate deals. Meanwhile, poorer defendants are executed for robberies “gone wrong” or other murders that were not premeditated. There have even been instances of accomplices getting executed while the person who actually committed the murder got life.
- ◆ All murder is horrible, but the death penalty is supposed to be reserved for the “worst of the worst.” Human beings have differing opinions on what counts as the worst – making it impossible to create a human system that is objective and consistent in selecting people for death.

- ♦ The death penalty is largely reserved for the poor. The vast majority of those on death row across the country are too poor to afford their own attorney.

Not Blind to Race

- ♦ The race of the victim has a profound effect on which crimes receive the death penalty. Studies in states as diverse as California, Ohio, and Georgia have found that people convicted of murdering a white victim were many times more likely to get sentenced to death than people convicted of killing African Americans or Latinos.
- ♦ In the U.S., over half of all murder victims are African American, yet less than 15% of the people executed since 1976 were sentenced to death for the murder of an African American.
- ♦ Race exacerbates the risk of executing an innocent person. Eyewitness identification, which is the leading cause of wrongful conviction, is even less reliable when the witness is identifying someone of a different race. Of the 160 death row exonerees in the US since 1973, 60% are black or Latino.

A Jury of Your Peers?

- ♦ People who do not support the death penalty are excluded from serving on capital juries, which means large segments of the population can't participate in the most serious cases. Studies have shown that death-qualified juries are more likely to favor a guilty verdict, raising the risk of wrongful convictions.
- ♦ Prosecutors have taken pains to strike black jurors in murder cases, even though the Supreme Court has expressly prohibited racially motivated strikes. A famous training video for Philadelphia prosecutors instructed them on how to strike black jurors and get away with it. Prosecutors in a Texas county codified these practices in a written training manual.
- ♦ In some communities, race-based exclusion from juries is extreme. For example, in Houston County, Alabama, 8 out of 10 qualified African Americans have been struck by prosecutors from death penalty cases.

Fairness in the death penalty is a moving target. Tinkering has only made the system more complex – not more fair. After 40 years, we have not found a way to make the death penalty any less arbitrary. And when a life is on the line, good luck simply isn't good enough.

“Our criminal justice system doesn't always mete out justice and fairness in neat little packages – sometimes it's a little rough. It's not something you can compute with a calculus or with any kind of certainty as to who belongs and who doesn't on death row.”

– Martin Franz, Prosecutor,
Wayne County, Ohio

“At least five men who were sentenced to death in Georgia had lawyers who referred to them in court as [n-word]s.”

– Steve Bright, Southern
Center for Human Rights

Sources available at ejusa.org