

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.

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, 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 since 1973, 60% are black or Latino.

“In a democracy where the state acts on behalf of its citizens, it is imperative that citizens speak up when the state sins in their name. This is particularly true in our nation where the death penalty is applied inequitably to people of color and poor people.”

– Lisa Sharon Harper

Biased and Arbitrary

- ♦ The vast majority of those on death row across the country are too poor to afford their own attorney.
- ♦ 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.
- ♦ Prosecutors have broad discretion to decide when to seek the death penalty. Such discretion is one of the hallmarks of the 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 to seep in, despite a prosecutor's best intentions.

"In a lawsuit, you must not deny justice to the poor."

– Exodus 23:6

"Do not pervert justice; do not show partiality to the poor or favoritism to the great, but judge your neighbor fairly."

– Leviticus 19:15

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.

Tinkering with the death penalty 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. When a life is on the line, luck simply isn't good enough.

Sources available at ejusa.org