

Race and the Death Penalty

Supporters and opponents of the death penalty agree that its application is racially discriminatory.

Studies which examine the relationship between race and the death penalty have now been conducted in every active death penalty state. In 96% of these reviews, there was a pattern of either race-of-victim or race-of-defendant discrimination, or both.

Approximately 35% of those executed since 1976 have been black, even though blacks constitute only 12% of the population. The odds of receiving a death sentence are nearly four times higher if the defendant is black than if he or she is white.

Current death row populations show the racially discriminatory impact of death penalty sentencing. The following states, in particular, illustrate the problem. As of the Spring of 2000, the percentages of black people on death row were as follows:

Alabama: 46% black Maryland: 72% black California: 36% black Pennsylvania: 63% black Florida: 36% black Texas: 41% black Illinois: 63% black Virginia: 39% black

A defendant's likelihood of receiving the death penalty correlates with the victim's race.

Of people currently on death row, 82% were convicted in cases involving white victims.

In 1990, the U.S. General Accounting Office reviewed numerous studies of patterns of racial discrimination in death penalty sentencing. Their review found that for homicides committed under otherwise similar circumstances, and where defendants had similar criminal histories, a defendant was several times more likely to receive the death penalty if his victim were white than if his victim were African American. Critics have accused some studies of failing to consider the defendant's criminal history and/or the heinousness of the crime. However, in the studies the GAO considered most reliable, cases were not deemed similar if the nature of the crime or the background of the defendant were materially different.

Of those sentenced to death for crimes committed as juveniles, two-thirds are people of color.

Additionally, two-thirds of the victims of juvenile offenders on death row are white. The typical juvenile offender on death row is a 17-year-old African American or Latino male whose victim is a white adult.

Why do patterns of racial discrimination in capital sentencing persist?

Prosecutorial discretion

In states such as New York and California, the death penalty can be sought for any intentional murder committed during the course of a felony, and the "intent" to commit murder can be formed instantaneously before the killing, without premeditation.

In California each year there are from 600 to 800 willful homicides that involve felonies. Prosecutors and juries have significant say in which of those 600-800 homicides will lead to death sentences. About 25 of them usually result in death sentences.

Prosecutors can also decide whether to charge defendants in state or federal courts. Currently, racial minorities are being prosecuted under federal death penalty law far beyond their proportion in the general population or the population of criminal offenders.

From 1988 to 1994, 75% of defendants convicted of participating in drug trafficking under the 1988 "drug kingpin" law were white. However, of the drug trafficking cases in which the prosecution sought the death penalty, only 11% of the of those convicted were white, while 89% were Hispanic or black. A congressional subcommittee determined that some of the people prosecuted under the kingpin law did not really qualify as kingpins, but rather were young black men in inner-city gangs or low-level individuals who had committed crimes for the kingpins.

The underlying crimes for which these defendants are being prosecuted are not excusable. But the statistics raise questions about why these defendants were chosen for the death penalty.

Ineffective counsel and procedural bars

Cases of poor representation from court-appointed defense lawyers have recently brought attention to the lack of adequate counsel for many criminal defendants -- a problem which particularly plagues people of color. Poor people charged with serious crimes have been entitled to legal assistance since *Gideon v*. *Wainwright* (1963). Such assistance varies among states, and federal funding for legal assistance involving capital punishment resource cases was cut in 1996. But studies show that state-appointed lawyers in capital cases are typically underqualified, underpaid, overworked, and unable to provide adquate representation.

Venue and jury selection

The manner and location in which juries are selected also lead to racial disparities in capital sentencing. For example, changes of venue can result in all-white juries for black defendants. In addition, problems arise when prospective jurors are not questioned outside the presence of others. Jurors who denied being racist when questioned in group settings have later revealed racist beliefs during sequestered, individualized questioning.

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