

## THE DEATH PENALTY

The United States is on an execution rampage. Since capital punishment was reinstated by the Supreme Court in the 1976 *Gregg v. Georgia* decision, more than 525 men and women have been put to death by the state. More than 150 of these executions have taken place since 1996. 3,500 people are on death row today, awaiting their turn with the executioner.

Capital punishment has existed throughout most of the course of our nation's history. By the mid-1960s, however, public opposition to the death penalty had reached an all-time high, and the practice was banned by the Supreme Court in the 1972 *Furman v. Georgia* decision. The Court held that state death penalty statutes were devoid of any standards, and that they therefore gave too much discretion to individual judges and juries to exact the ultimate punishment.

Soon after the *Furman* decision, states began passing new laws that provided sentencing guidelines for juries. The Supreme Court was given another opportunity to address the issue of capital punishment in 1976, in *Gregg v. Georgia*, and it ruled that "the punishment of death does not invariably violate the Constitution." Since this ruling, capital punishment rates have grown exponentially in the United States.

In 1994, the Federal Death Penalty Act authorized capital punishment for more than 60 offenses, including some crimes that do not involve murder. Moreover, the 1996 Anti-Terrorism and Effective Death Penalty Act created new barriers to effective federal review of constitutional claims in capital cases. Congress and many states have also slashed funding for most of the legal representation death row inmates formerly received from death penalty resource centers.

Capital punishment, the ultimate denial of civil liberties, is a costly, irreversible and barbaric practice, the epitome of cruel and unusual punishment. It does not deter crime, and the way it is implemented is grotesquely unfair.

### THE DEATH PENALTY IS UNFAIR

Regardless of one's viewpoint about the morality or constitutionality of the death penalty, most people would agree that if we are going to continue executing people in the U.S., we should be doing it fairly and rationally. However, three factors, unrelated to the crime itself, greatly influence who gets executed and who does not: poverty, race and geography.

**Lethal Injection for the Poor** — The American Bar Association and many scholars have found that what most often



determines whether or not a death sentence is handed down is not the facts of the crime, but the quality of the legal representation. The overwhelming majority of death row inmates receive substandard legal representation at trial. Almost all capital-crime defendants are indigent when arrested, and are generally represented by court-appointed lawyers, who are inexperienced and underpaid. The *National Law Journal*, reviewing capital cases in six Southern states, reported that defense lawyers are often "ill-trained, unprepared... [and] grossly underpaid."

Defending a capital case is time-consuming, taking about 700-1000 hours. In some jurisdictions the hourly rates for appointed attorneys in capital cases are less than the minimum wage, and usually much less than the lawyer's hourly expenses. Moreover, courts often authorize inadequate funds for investigation and experts — or refuse to do so altogether. This is in the face of the almost limitless such funding for the prosecution. Wealthy people who can hire their own counsel are generally spared the death penalty, no matter how heinous their crimes. Poor people do not have the same opportunity to buy their lives.

**Racial Bias Permeates the System** — Death row in the U.S. has always held a disproportionately large population of people of color relative to the general population. Whereas African Americans constitute 12% of the U.S. population, they are 35% of those on death row; 9% are Native American, Latino or Asian. The most important factor in levying the death penalty, however, is the race of the victim. (Those who kill a white person are more likely to receive the death penalty than those who kill a black person.)

A 1998 report by the Death Penalty Information Center summarizes the findings of several scholars which illustrate this point. In 96% of the studies examining the relationship between race and the death penalty there was a pattern of race-of-victim or race-of-defendant discrimination, or both.

The report also reveals a consistent trend indicating race-of-victim discrimination.

For example, in Florida, in comparable cases, "a defendant's odds of receiving a death sentence are 4.8 times higher if the victim was white than if the victim was black. In Illinois the multiplier is 4, in Oklahoma it is 4.3, in North Carolina, 4.4, and in Mississippi, it is 5.5."

The state of Kentucky presents a particularly outrageous example of race-of-victim discrimination: despite the fact that 1,000 African Americans have been murdered there since the 1975 reinstatement of the death penalty in that state, as of spring 1999, *all* of the state's 39 death row inmates were sentenced for murdering a white victim; none were there for murdering an African American.

Several studies show the effects of outright racial discrimination. One recent example, a 1998 University of Iowa study of sentencing in Philadelphia, showed that the odds of receiving a death sentence are nearly 3.9 times greater if the defendant is African American.

These patterns of racial disparities are partly explained by the fact that the nation's prosecutors, who make the threshold decision about whether or not to

**(Capital Punishment is) a privilege of the poor.**

— Clinton Duffy, former warden, San Quentin Prison, California

seek the death penalty are almost exclusively white men. Of the district attorneys in U.S. counties using capital punishment, 98% are white, and only 1% are African American. New York State has *only one* African American district attorney.

**Where You Live Determines Whether You Die** — Whether someone convicted of a capital crime receives a death sentence depends greatly on the state or county in which the trial and conviction takes place. In some states, a death sentence is rare. Connecticut had five people on death row in 1999; Kansas, only two. Southern states, particularly Texas (443 death row inmates in 1999), hand down significantly more death sentences than those in the rest of the country. California, the state with the largest penal system, had 513 inmates on death row in the spring of 1999. Such state-to-state disparities exist because death penalty statutes are a patchwork of disparate standards, rules and practices and the consequence is the difference between life and death. Furthermore, some prosecutors are more zealous in seeking the death penalty than others — particularly if they are running for re-election.

In some states, inmates can be executed for crimes they committed at the age of 16; in others, only those who committed murder at age 18 or older are eligible for the death penalty. Some states, but not all, ban the execution of people with mental retardation. Some states include felony murder (unpremeditated murder committed in the course of another crime such as robbery or burglary) as a capital crime; others do not. In the 29 states that have a sentence of life without parole, 23 have statutes that bar judges from letting jurors know they have that sentencing option. Since studies consistently show that when given a choice between a death sentence and a sentence of life without parole, most people will choose the latter, failure to inform a jury of this alternative is tantamount to sending more people to the execution chamber.

### CAPITAL PUNISHMENT IS NOT A DETERRENT TO MURDER

Social science research has discredited the claim that execution deters murder. The majority of murders are committed in the heat of passion, and/or under the influence of alcohol or drugs, when there is little thought given to the possible consequences of the act. "Hit men" and other murderers who plan their crimes beforehand, intend and expect to avoid punishment altogether by not getting caught.

Law enforcement officials know that the death penalty is not a deterrent. Imposing the



Anthony Porter spent 16 years on death row for a crime he did not commit. He was released a mere two days before his execution was to take place. Here, he embraces his mother at home.

lives.... The use of the death penalty only lowers the standards of government to the mentality of the murderer himself." We do not punish rape with rape, or burn down the house of an arsonist. We should not, therefore, punish the murderer with death.

The irreversibility of the death penalty is especially significant in light of the percentage of innocent people on death row. A study published in 1982 in the *Stanford Law Review* documents 350 capital convictions in which it was later proven that the convict had not committed the crime. Of those, 23 convicts were executed; others spent decades of their lives in prison. In a 1996 update of this study it was revealed that in the past few years alone, four individuals were executed although there was strong

chamber, firing squad (still authorized in Idaho and Utah), and the most common method, lethal injection. The United States is the only Western industrialized nation that practices the death penalty, and is by far the nation with the largest death row roster in the world. In comparison, all of Western Europe has abolished the death penalty, either by decree of law, or by practice. Fifty-seven nations and territories outlaw the death penalty for any crime, fifteen more allow it only for exceptional crimes such as military law or wartime crimes. Another twenty-six countries and territories are abolitionist de facto, meaning they have not executed anyone during the past ten years or more, or that they have made an international commitment not to carry out executions. In numbers of people executed annually, the United States far exceeds the other 94 documented countries and territories that continue to deliver the death penalty.

### WHAT ALTERNATIVES ARE THERE TO CAPITAL PUNISHMENT?

Various polls of public attitudes about crime and punishment found that a majority of people in the United States support alternatives to capital punishment. According to the Death Penalty Information Center, when presented with possible sentencing alternatives, 50% of those surveyed chose life imprisonment without parole plus restitution to the victim's family as an alternative to the death penalty.

In 45 states, laws allow life sentences for murder that severely limit or eliminate the possibility of parole. Thirteen states impose sentences without the possibility of parole for 25 - 40 years, and all but three of the states that use capital punishment also have the option of life imprisonment with no possibility of parole. Although it is often assumed that capital punishment is less costly than life imprisonment, the opposite is true: in terms of dollars, in terms of crime control, and in terms of morality.

#### RESOURCES:

Hugo A. Bedau, *The Case Against the Death Penalty*, 1997. Available through ACLU Publications, 1-800-775-ACLU

*ACLU Capital Punishment Project Activities and Status Report*, 1996

Death Penalty Information Center, 1320 18th Street, NW, Washington, DC, 20036, [www.essential.org/dpic/](http://www.essential.org/dpic/)

NAACP/LDEF, 99 Hudson Street, NY, NY 10013-2897.

For more information about the ACLU Capital Punishment Project, please contact them at: 122 Maryland Avenue, N.E., Washington, D.C. 20002, <[capitalpunishment@aclu.org](mailto:capitalpunishment@aclu.org)>

Or visit the ACLU Death Penalty issue page at <[www.aclu.org](http://www.aclu.org)>



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**"A society that respects life does not deliberately kill human beings.**

**An execution is a violent public spectacle of official homicide, and one that endorses killing to solve social problems – the worst possible example to set for the citizenry. The benefits of capital punishment are illusory, but the bloodshed and the resulting destruction of community decency are real."**

– Hugo Bedau, in *The Case Against the Death Penalty*

death penalty more often was thought to be cost-effective by only 29% of 386 randomly selected U.S. police chiefs polled by Peter D. Hart Research Associates in 1995. States that have death penalty laws do not have lower crime rates or murder rates than states without such laws. And states that have abolished capital punishment, or reinstated it, show no significant changes in either crime or murder rates.

### AN UNJUSTIFIED AND IRREVERSIBLE MEANS OF RETRIBUTION

However satisfying vengeance may seem, a civilized society cannot accept an eye-for-an-eye, tooth-for-a-tooth delivery of justice. Although some families and loved ones of murder victims approve the death penalty, many others are against it. Further, some family members of homicide victims comment that the death penalty process prolongs their pain, and only serves to make their healing more elusive.

Financial and emotional support is what they need most, not more violence. In the words of the father of one murder victim, "Violence is not an acceptable method of solving the problems that arise in our daily

evidence that they were not guilty of the crime for which they were condemned.

Since 1976, 77 persons have been released from death row because they were not guilty of the crime for which they had been condemned to death (33 of these releases have occurred since 1990). These lucky interventions occurred almost always as the result of the efforts of students, journalists or *pro bono* lawyers, often only hours before a scheduled execution, and usually after the condemned had been on death row for over ten years.

Although it is commonly thought that the death penalty is reserved for those who commit the most heinous crimes, in reality only a small percentage of death-sentenced inmates were convicted of unusually vicious crimes. The vast majority of individuals facing execution were convicted of crimes that are indistinguishable from crimes committed by others who are serving prison sentences, crimes such as murder committed in the course of an armed robbery.

### A BARBARIC PRACTICE

Our nation exacts capital punishment in five ways: by hanging, electrocution, gas