The California Death Penalty is Discriminatory, Unfair, and Officially Suspended.

So Why Does Los Angeles District Attorney Jackie Lacey Still Seek to Use It?

ACLU
Los Angelenos have repeatedly and overwhelmingly rejected the death penalty at the ballot box.\textsuperscript{1} The death penalty is racially biased, and all too often, it is handed down to those with the worst lawyers. Again and again, we have seen that innocent persons were wrongly convicted and sentenced to death in California.\textsuperscript{2} As Los Angeles District Attorney Jackie Lacey recognizes, the death penalty does not deter crime and does not provide closure to victims.\textsuperscript{3} A formal commission tasked with considering the death penalty in California concluded it is a dysfunctional disaster in practice, and that it would require substantial new funding to address the problems with appellate review.\textsuperscript{4} This conclusion was echoed this spring by two justices of the California Supreme Court who described the death penalty in California as “an expensive and dysfunctional system that does not deliver justice or closure in a timely manner, if at all.”\textsuperscript{5}

In March of this year, Governor Gavin Newsom issued a statewide moratorium on the death penalty in California, dismantled the execution chamber, and withdrew the state’s lethal injection protocols.\textsuperscript{6} Yet Lacey has continued to allow death penalty trials to go forward. As Deputy District Attorney Michele Hanisee acknowledges, “It’s got to be really confusing for the average citizen who sees both things going on and doesn’t understand how all of the above [death penalty trials and a statewide moratorium] can be occurring.”\textsuperscript{7} Not only confusing, Lacey’s continued usage of the death penalty at new trials is downright wrong. Lacey was sworn in as the 42nd district attorney for Los Angeles in December 2012. To date, 22 people have received the death penalty in Los Angeles County while she has been in office.\textsuperscript{8} An examination of the 22 death penalty verdicts returned under Lacey’s tenure reveals evidence of the death penalty’s most serious albatrosses: racial bias and inadequate defense counsel.

13 Latinx defendants, eight Black defendants, and one Asian defendant have been sentenced to die under Lacey’s administration.\textsuperscript{9} Zero white defendants have been sentenced to die in this period.

The overwhelming majority of victims in homicide cases in Los Angeles are persons of color. Between 2000 and 2015, Latinx, Black, and Asian homicide victims collectively comprised 87% of the victims of homicide in Los Angeles County, while white homicide victims constituted only 12%.\textsuperscript{10} Nonetheless, more than a third (36%) of the 22 defendants sentenced to death during Lacey’s term involved at least one white victim.\textsuperscript{11} The pernicious role of racial bias is not new to the operation of the death penalty in Los Angeles, or California as a whole. Study after study has found discrimination in police and prosecutor charging practices, and in the imposition of the death penalty.\textsuperscript{12}

The response of Los Angeles Deputy District Attorney Hanisee to the problem of racial discrimination in the death penalty is a bizarre one. She suggested that California execute the white people. She said, “Of the 24 or so who are presently eligible for execution, half of them are white men. So let’s execute them.”\textsuperscript{13} Executing someone on the basis of their race is, of course, unconstitutional.\textsuperscript{14}

2. Not a Fair Fight: Disbarred and Suspended Defense Counsel and Pro Se Defendants

Of the 22 death penalty sentences imposed under Lacey, over a third of the defendants (8 people) were represented by counsel who had prior or subsequent serious misconduct charges. Specifically, public bar records indicate that defense counsel in five cases were previously or subsequently suspended or disbarred, the most serious levels of discipline for ethical violations.\textsuperscript{15} Defense counsel for two other defendants was put on probation on three occasions, and counsel for the eighth defendant currently faces multiple bar charges.\textsuperscript{16} In yet another case, defense counsel waived opening statements, a critical opportunity to frame the case for the jury, and put on no defense at all in the guilt phase.\textsuperscript{17} He then repeatedly fell asleep during the guilt and penalty phases of the capital trial.\textsuperscript{18} Furthermore, in an additional case, the defendant represented himself.\textsuperscript{19}

**Key Findings**

1. **Every Defendant Sentenced to Death Under Jackie Lacey’s Tenure Is a Person of Color**

All of the 22 people who have received death sentences while Lacey has been in office are people of color;
Institutional defenders (i.e., public defenders), with specialized death penalty training and adequate staffing on capital cases, often provide a markedly higher level of representation than private lawyers appointed in capital cases.\textsuperscript{20} Even though institutional defenders represent the majority of capital cases,\textsuperscript{21} of the 22 cases with death verdicts, the institutional defenders represented only three. The vast majority—19 of the 22 cases—were handled by private appointed or retained lawyers. In Los Angeles, private appointed lawyers may have an incentive to work against their clients’ interests: they are guaranteed payment of their full fee only if they take the case to trial, which may discourage them from seeking life-saving plea bargains for their clients.\textsuperscript{22}

Abysmal lawyering has long been a predictor of who will actually receive the death penalty.\textsuperscript{23} Good lawyering is necessary to uncover witness bias, expose false testimony, and make the case for life by giving the jury important evidence about the person’s life and background that would support rejection of the death penalty. Failures of defense counsel, along with prosecutorial misconduct, are chief contributors to wrongful convictions.\textsuperscript{24} Because of the serious and intractable problems with underfunding and delay in California’s appellate review system, it is likely to be decades before the full scope of the problems is clear and the issue of ineffective counsel is scrutinized by the courts.\textsuperscript{25} The last two California death row exonerees won their freedom only approximately 25 years after their convictions—delays that are only likely to grow given California’s long and growing appellate backlog.\textsuperscript{26}

Los Angeles remains an outlier even after accounting for its large size. Per capita, Los Angeles over the last five years has had more death sentences than 53 of the 58 counties in California.\textsuperscript{29} Over the past five years, Los Angeles has also produced more death sentences per capita than any large county in Texas, North Carolina, Pennsylvania, Utah, Washington, or Georgia.\textsuperscript{31}

### Conclusion

Continuing to seek the death penalty in Los Angeles is not only a waste of taxpayer dollars, but it is out of step with the desires of the voters in the county. It is also morally wrong. The death penalty discriminates on the basis of race and against the poor, and it is administered disproportionately and arbitrarily based on a defendant’s ZIP code and the quality of one’s attorney. The death penalty is out of step with the value of equal justice that Los Angeles residents demand. It is time for District Attorney Lacey to step up and step away from the death penalty.

#### 3. District Attorney Lacey’s Actions Have Furthered Los Angeles’s Role as the Nation’s Largest Producer of Death Sentences

In absolute numbers, no county in the United States has produced more death sentences than Los Angeles. Of the 723 people currently under a sentence of death in California, 222—or nearly a full third (31%)—are from Los Angeles County.\textsuperscript{27} Even as death sentencing plummets nationwide, Los Angeles remains an outlier. Los Angeles (CA), Riverside (CA), and Maricopa (AZ) Counties were the only three counties nationwide to have more than 10 death sentences over the last five-year period, from 2014 through 2018.\textsuperscript{28} Out of more than 3,100 counties nationwide, in 2018, Los Angeles was one of only four counties with more than one death sentence.\textsuperscript{29}
Endnotes

1 A majority of Los Angeles voters voted in favor of Proposition 34 in 2012 and Proposition 62 in 2016, two ballot propositions to repeal the death penalty. Los Angeles County Election Results, Los Angeles County Registrar-Recorder/County Clerk (Nov. 6, 2012 & Nov. 8, 2016).

2 Five persons have been removed from death row after their exonerations: Ernest Graham (exonerated in 1981 after 9 years on the row), Tracy Jones (exonerated in 1996 after 14 years on the row), Oscar Morris (exonerated in 2000 after 17 years on the row), Patrick Crey (exonerated in 2005 after 26 years on the row), and Vicente Benavides (exonerated in 2015 after 25 years on the row). All five exonerates are persons of color. See Death Penalty Information Center Innocence Database, https://deathpenaltyinfo.org/innocence?innocence_name=&state_innocence=12&race=All&dna=All.

3 Gil Garcetti, It’s Time to End the Death Penalty, Orange Co. Register (Oct. 20, 2016) (quoting Lacey’s statements in an interview with ABC).


5 People v. Potts, 6 Cal. 5th 1012, 1063 (March 28, 2019) (Liu, J., concurring, joined by Currin, J.); see also, Jones v. Chapman, 31 F. Supp. 3d 1050, 1053 (C.D. Cal. 2014) (federal court examining California’s system in detail and concluding it was unconstitutionally dysfunctional and “plagued by inordinate and unpredictable delay”), rev’d on other grounds sub nom., Jones v. Davis, 806 F.3d 538 (9th Cir. 2015).


9 The NAACP Legal Defense and Educational Fund maintains a database of the names and races of defendants on death row in each state. Of the 22 defendants from Los Angeles County listed by the HCRC, zero are identified as white in the NAACP’s database. Deborah Finch, Death Row U.S.A. Fall 2018, A Quarterly Report by the Criminal Justice Project of the NAACP Legal Defense and Educational Fund, Inc. 42-46, https://www.naacpldf.org/wp-content/uploads/DRUSAFall2018.pdf (listing the race of the death row prisoners, including #122 identified on the HCRC list during Lacey’s term, supra note 8).

10 See, e.g., Armando Emañjomeh and Ryan Menezes, Homicide Report, L.A. Times, Feb. 27, 2015 (between 2000 and 2015, 49% of victims were Latinx, 34% were Black, 12% were white, and 4% were Asian).

11 The cases of these defendants sentenced to death under Lacey include at least one white victim: Kevin Haley, Ka Passouk, Kevin Pearson, Christian Perez, John Perez, David Ponce, Rudy Anthony Ruiz, Michael Thomas. This information was gathered by identifying the names of the victims from those cases and using The Homicide Report to determine the race of the victims. The Homicide Report, L.A. Times, https://homicide.latimes.com.

12 See, e.g., Glenn L. Pierce & Michael L. Radelet, The Impact of Legally Inappropriate Factors on Death Sentencing for California Homicides, 1999-1999, 46 Santa Clara L. Rev. 1 (2000) (finding persons charged with killing white victims were more likely to be sentenced to death than in cases with victims of color); Nick Peterson, Examining the Sources of Racial Bias in Potentially Capital Cases: A Case Study of Police and Prosecutorial Discretion, 7 Race & Justice 1 (2016) (analyzing a case against a white defendant who was tried and sentenced to death, and to which all nine juries charged with white victims with death-eligible offenses than similar cases with victims of color); Nick Peterson, Cumulative Racial and Ethnic Inequalities in Potentially Capital Cases: A Multistage Analysis of Prosecutorial Charging Decisions, 14 Socio-Legal Studies 149 (2011) (finding white defendants charged with death penalty more frequently in cases with white victims than those without).

13 See Arango, supra note 7.

14 See, e.g., McClevey v. Kemp, 481 U.S. 279, 393 (1987) (purposeful racial discrimination violates the equal protection clause and is unconstitutional).

15 These attorneys include: (1) William L. McKinney, counsel for defendant Desi Angel Marentes, who was disbarred in 2017, following sanctions in 2003 for failing to cooperate in an investigation, in 2006 for failing to communicate with a client, a suspension in 2014 for his deficient handling of a writ of habeas corpus, and additional subsequent bar violations. See http://members.calbar.ca.gov/courtDocs/15-0-139442.pdf, (2) Lawrence K. Young, counsel for Rudy Anthony Ruiz (sentenced in 2013), who was previously suspended in 2013, shortly after the penalty phase of the trial, following a string of prior suspensions. See http://members.calbar.ca.gov/courtDocs/11-191662.pdf, (3) Carlos Joel Perez, the other counsel for Ruiz, who was disbarred in 2010, and then previously suspended, http://members.calbar.ca.gov/fal/Licensees/Detail/286596, (4) Jonathan Edward Roberts, counsel for defendant Chester Turner (sentenced in 2014) and Hercilio Meza (sentenced in 2017), who is currently ineligible to practice law following a string of prior suspensions and failures to provide legal services to seven separate clients, all of which took place between 2016 and 2017. See http://members.calbar.ca.gov/courtDocs/17-O-017841.pdf, and (5) Seymour Amster, counsel for Lonnie Franklin, who was previously suspended, http://members.calbar.ca.gov/fal/Licensees/Detail/105308.

16 See Geoffrey Pope, counsel for Ronald Brim and Angel Mendoza, who was three times placed on probation by the state bar for unspecified ethical violations in 1991, 1993, and 1995. See http://members.calbar.ca.gov/fal/Licensees/Detail/67172, Donald Calabria, “The Law Dogg,” was counsel for David Cruz Ponce, sentenced to death in 2018. Calabria faces 28 pending charges of misconduct involving his alleged failures to provide legal services to seven separate clients, all of which took place between 2016 and 2017. See http://members.calbar.ca.gov/courtDocs/17-O-000492.pdf.

17 People v. Leonardo Alberto Cisneros, No. VA087669-02, RT 1197 (waiving opening statement); 3192 (waiving the reserved opening statement and resting without presenting any evidence).

18 People v. Leonardo Alberto Cisneros, No. VA087669-02, RT 3873-74 (counsel stating after a witness examination that he had “dozed off” during the testimony and the trial court referencing an earlier complaint by the defendant about the same); RT 44-49 (defendant stating on the record the failings of his counsel, including the fact that lead counsel repeatedly fell asleep at both phases of the trial).

19 See People v. Kevin Haley.

21 Cal. Comm. on the Fair Admin. of Just., *supra* note 4, at 125 (“In Los Angeles county, approximately half of the ongoing death penalty cases are handled by the Public Defender, and half are handled by the Alternative Public Defender or appointed counsel.”).

22 Attorneys who settle cases pre-trial are guaranteed only 40% of their fee. See County of Los Angeles Memorandum of Understanding Re Central District Capital Case Appointments, Section C Payment Schedule (setting forth various stages of payment of the flat fee: 15% at the appointment, 25% at the conclusion of preliminary hearing or arraignment, 10% upon announcing ready for trial, 15% at the conclusion of the People’s case, 15% at the conclusion of trial, 15% at the conclusion of post-trial sentencing, and 5% upon settlement of the record on appeal). This creates a structural conflict between the attorney’s private interest in fee collection and the client’s interest in zealous advocacy, which may include pursuit of a plea agreement. See generally Rules of Professional Conduct of the State Bar of California, Rules 3-300 and 4-200; ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, Guideline 9.1(B) (2), (3) (rev. ed. 2003), in 31 Hofstra L. Rev. 913 (2003).


24 Los Angeles exoneree Oscar Morris won his post-conviction case after the court found new evidence of his innocence, and prosecutorial misconduct was uncovered. See also *People v. Morris*, 46 Cal. 3d 1, 9, 249 Cal. Rptr. 119, 123, 756 P.2d 843, 847 (1988). It was later revealed that his defense counsel Ron Slick had unethically attempted to help the prosecution in a different capital case in 2001. DPIC, Innocence Cases, https://deathpenaltyinfo.org/innocence-cases. Slick was known for his willingness to try capital cases quickly—a quality that led to eight clients on death row. See e.g., Welsh White, Litigating in the Shadow of Death, 8 (2009).


26 See DPIC Innocence Database, https://deathpenaltyinfo.org/innocence?inno_name=&exonerated=&estate_innocence=12&race=All&dna=All. Patrick Croy was exonerated in 2005 for a wrongful 1975 conviction, and Vicente Benavides was exonerated in 2018 for a wrongful 1993 conviction.


30 Only Riverside, Tulare, Kern and El Dorado Counties have higher per capita death sentencing rates than Los Angeles in the last five years. See DPIC County data by year, *supra* note 29 (death sentences); California Department of Finance, E-2 California County Population Estimates and Components of Change by Year—July 1, 2010—2018 (July 1, 2017 and July 1, 2018) http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-2/index.html.

31 See DPIC County data by year, *supra* note 29.