

Hello and welcome to the first DPIC podcast, examining issues in the death penalty system.

In this edition we will explore the issues of arbitrariness.

The arbitrariness of the death penalty has been a problem for decades.

Why does one person end up on death row and another person who commits a similar offense does not?

Why have 435 prisoners been executed in Texas since 1976 while California has only executed 13 and New York none at all?

Why do more people get sentenced to death for killing a white victim than for killing a black victim, given that equal numbers of whites and blacks are victims of murders?

If the death penalty is reserved for the worst of the worst offenders, how do we determine who is worse?

To explore the issue of arbitrariness we'll examine the history of the death penalty and some important statistics.

In 1972, the Supreme Court of the United States held in *Furman v. Georgia* that the death penalty was being applied arbitrarily and capriciously, in violation of the eighth amendment to the Constitution. Without some guidance for applying the capital punishment more rationally, it could not be applied at all. After 1972, many states rewrote their death penalty statutes, including Georgia, which created a two part trial: one to determine guilt, the second to decide sentencing.

In 1976, the Supreme Court in *Gregg v. Georgia* held that the death penalty itself was constitutional and Georgia's statute provided juries the necessary, guided discretion. Today, problems persist with the application of the death penalty. For example, 79% of the victims in murder cases resulting in an execution have been white, while only 14% were black. In Georgia, a study by professor David Baldus found suspects were 4.3 times more likely to get the death sentence if their victims were white than if their victims were black. Another aspect that contributes to the arbitrariness of the death penalty is the quality of representation a defendant receives.

Many suspects are not able to afford their own representation and have to accept whatever lawyer is assigned. In 1990, the *National Law Journal* noted that these defense lawyers are quote, "Too often ill-trained, unprepared, and grossly underpaid." In 2001, the *Seattle Post Intelligencer* found that one fifth of Washington's death row population had been represented by lawyers that had been or were later disbarred, suspended, or arrested. In Texas, a *Dallas Morning News* study found that one in four death row inmates had been represented at the trial or appeal by court appointed lawyers who had been disciplined for professional misconduct at some point in their careers.

Cost also affects who lives and who dies. The high cost of a capital case weighs heavily on rural counties. These capital murder trials can devastate the budget of a small county, said Allen Ames, a Texas judge. Urban areas can shoulder the cost, and therefore conduct more capital trials. The Southbend Tribune found in 2001 that two Indiana counties produced almost as many death sentences as all others combined. Geography comes into play in more ways than simply urban vs rural counties.

In a study completed by the Department of Justice in 2000, 42% of federal death penalty cases came from five federal districts out of 94 total. Forty districts never recommended seeking the death penalty. The South accounts for 83% of all modern executions, and 56% of all executions in the South come from Virginia and Texas alone. By comparison, the Northeast has had less than 1% of the executions since 1976. Finally, even years after *Gregg v. Georgia* the problem of arbitrariness persists in the state. In 2007, the Atlanta Journal Constitution completed a study of the death penalty in Georgia and concluded, "Getting the death penalty in Georgia is as predictable as a lightning strike." They found that of the 132 most heinous murders in the state, only 29 received the death sentence, mainly those with white victims. Fifty defendants avoided the death penalty by pleading guilty. Former Georgia Chief Justice Norman Fletcher said, "It's like a roulette wheel, arbitrariness is a weakness of the death penalty."

Thank you for listening to our DPIC podcast.

To learn more about arbitrariness and other death penalty issues go to:

www.deathpenaltyinfo.org