

Race, Human Rights, and the U.S. Death Penalty

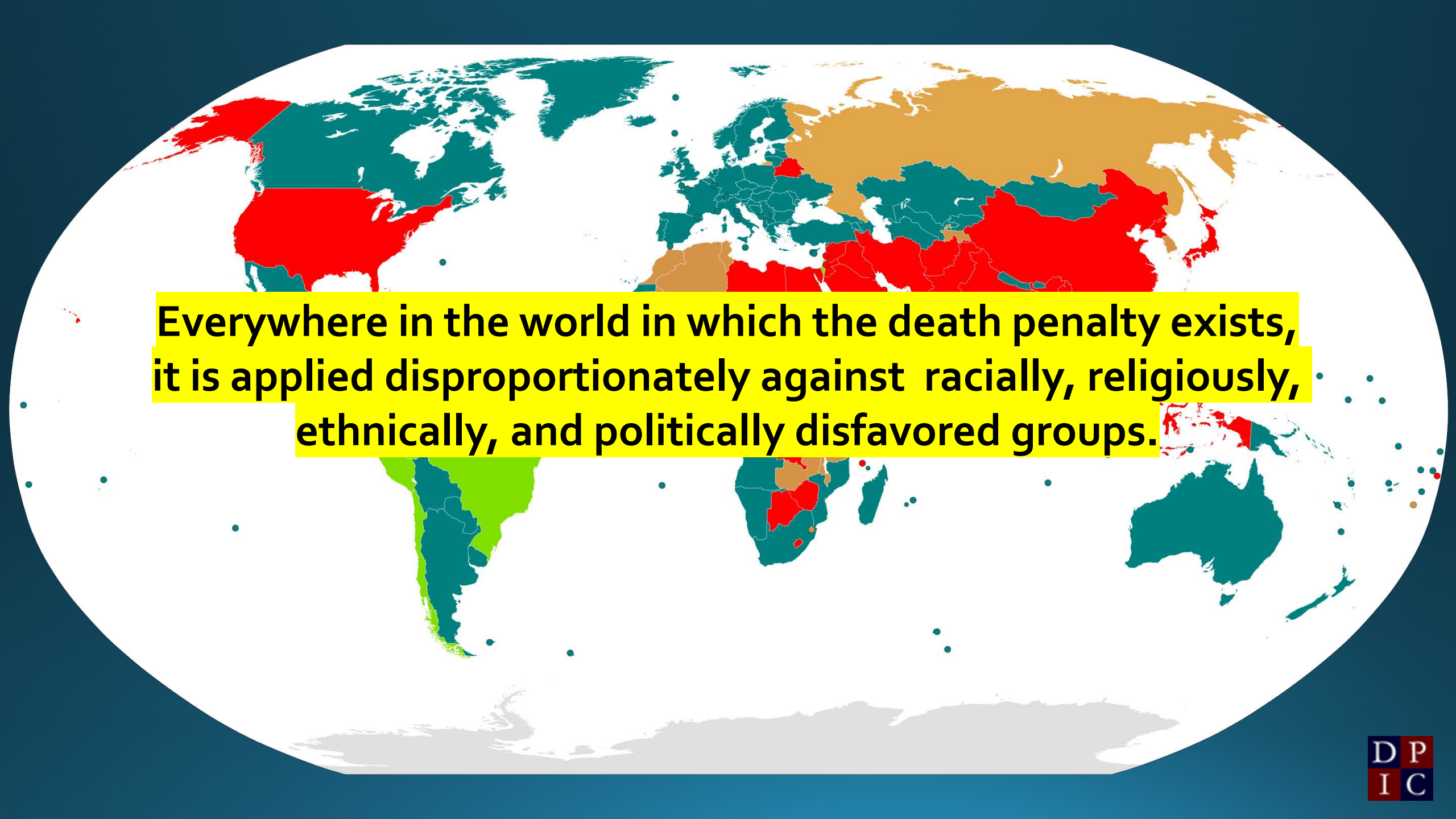
- Robert Brett Dunham, Executive Director, Death Penalty Information Center
- Kristina Roth, Senior Policy Associate, Legal Defense Fund
- Olivia Ensign, Senior Advocate, Human Rights Watch

November 7, 2022



International Convention on the Elimination of All Forms of Racial Discrimination

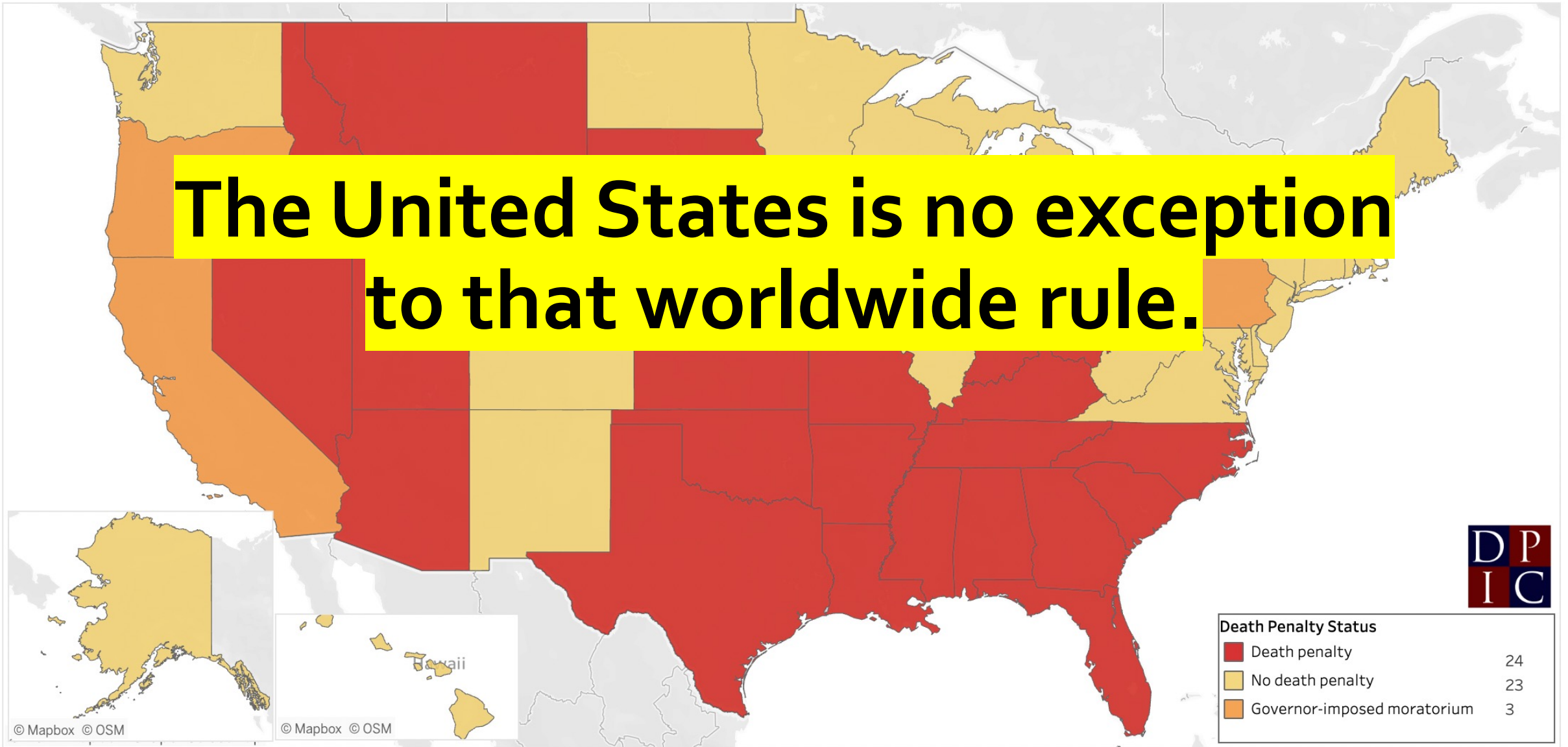
- Article 2 § 1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms
- (a) Each State Party undertakes to engage in no act or practice of racial discrimination ... and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation
- Article 6. States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention



Everywhere in the world in which the death penalty exists, it is applied disproportionately against racially, religiously, ethnically, and politically disfavored groups.

States with and without the death penalty – 2021

The United States is no exception to that worldwide rule.



Year

2021

State

(All)

Region

(All)

Year of Abolition

(All)

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Lynchings and Capital Punishment

The Lynching of Henry Smith on the Courthouse Lawn, Paris, Texas 1893



The 1893 lynching of Henry Smith in Paris, Texas

Many lynchings took place under cover of darkness with a few people capturing and killing a lynching victim, allowing the community to disclaim collective responsibility. But hundreds of lynchings during

These public lynchings were often indistinguishable in appearance from legally sanctioned executions. In the North, public executions fell into disfavor in the 1800s, with many states banning the practice before

The Execution of Raney Bethea on the Courthouse Lawn, Owensboro, KY 1936



The 1936 execution of Raney Bethea in Owensboro, Kentucky

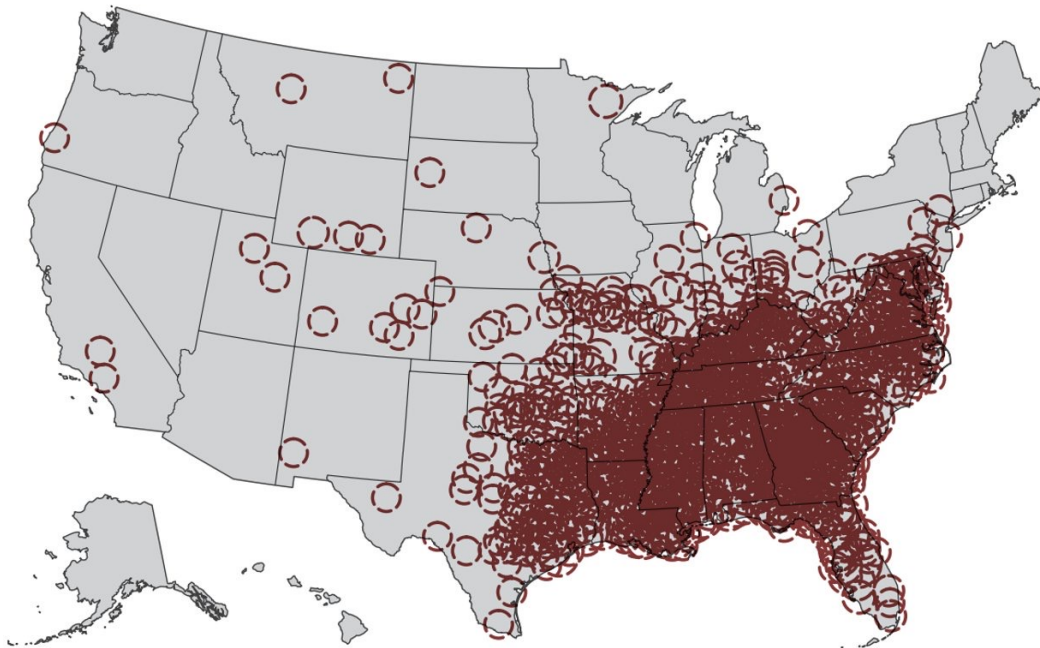
The Last Public Execution

In August 1936, more than 20,000 people gathered in Owensboro, Kentucky to watch the hanging of

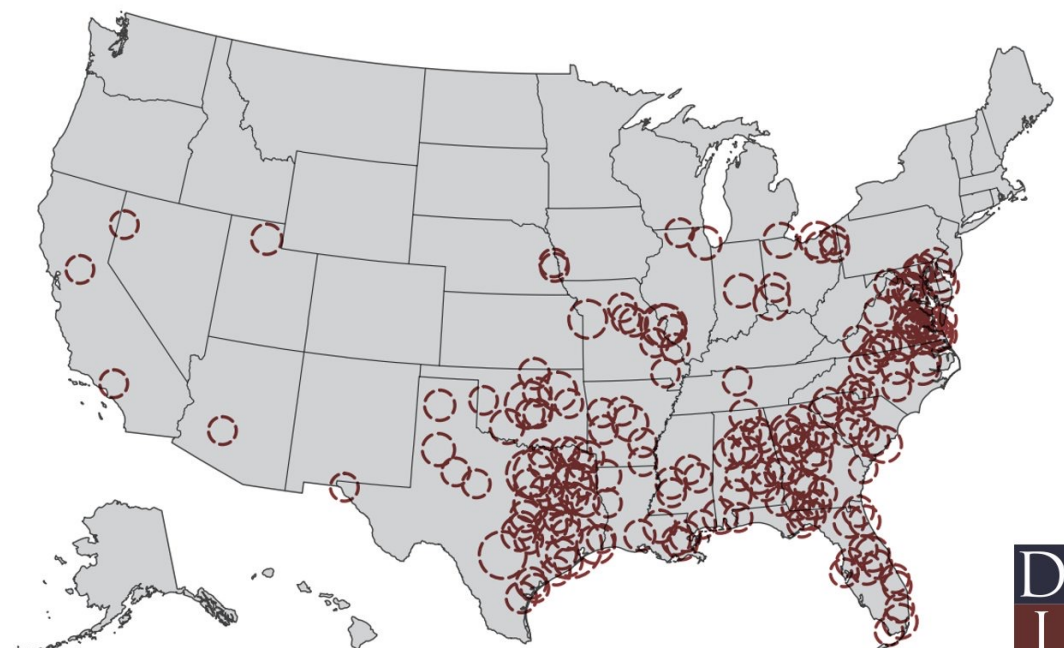
To ensure a public execution, prosecutors tried and convicted Bethea only on the rape charge.⁴¹

Lynchings and Capital Punishment

Lynching of Black Victims (1883-1940)



Executions of Black Defendants (1972-2020)



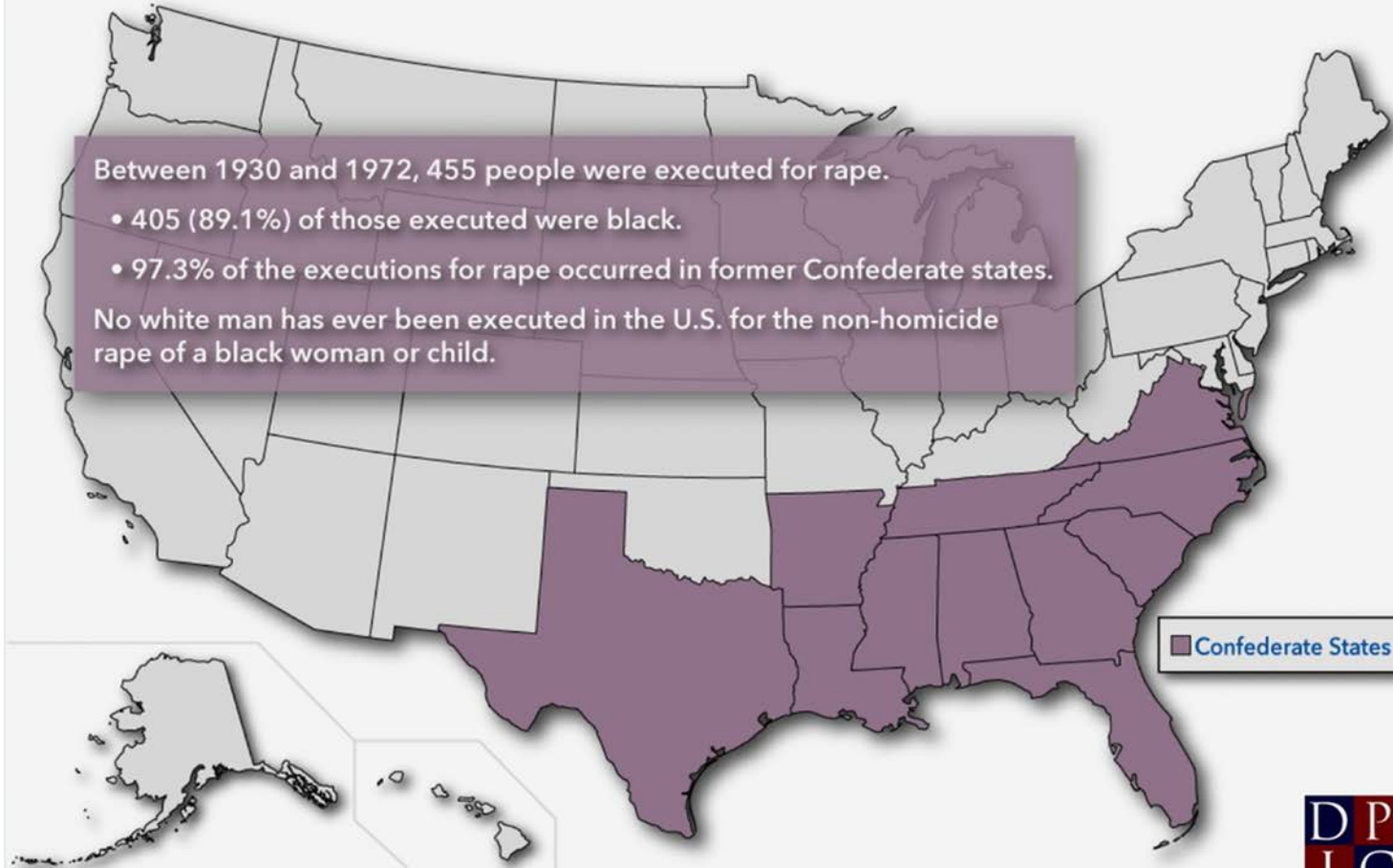
the community to disclaim conce... the North, public executions fell to, more than 20,000 people gathered... to ensure a public execution, p...
But hundreds of lynchings during... 1800s, with many states banning t... Kentucky to watch the hanging of... and convicted Bethea only on t...

The use of the death penalty for rape, more than for any other crime, demonstrates the racially discriminatory nature of capital punishment in the United States.

Between 1930 and 1972, 455 people were executed for rape.

- 405 (89.1%) of those executed were black.
- 97.3% of the executions for rape occurred in former Confederate states.

No white man has ever been executed in the U.S. for the non-homicide rape of a black woman or child.

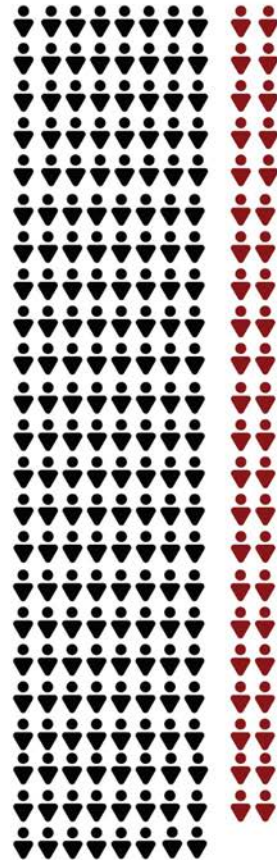


Race Disparities in Virginia Executions from 1900-1969

Virginia provides an illustration of how much race determined who was executed for non-murder crimes. Before the Civil War, Virginia explicitly provided different penalties for white people and its enslaved population. By 1848, white people could be sentenced to death only for first-degree murder while enslaved Black people could be executed for a number of non-homicide offenses.⁵⁸ Although this formal distinction was gone by the twentieth century, the state's executions showed that in practice different rules were being applied to white and Black defendants.

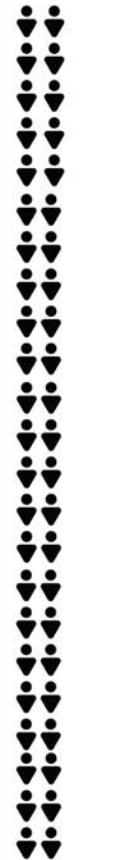
MURDER

Black	White
185	46



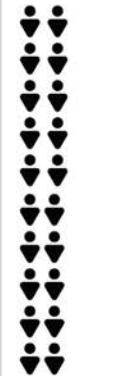
RAPE

Black	White
48	0



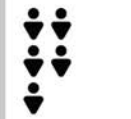
ATTEMPTED RAPE

Black	White
20	0

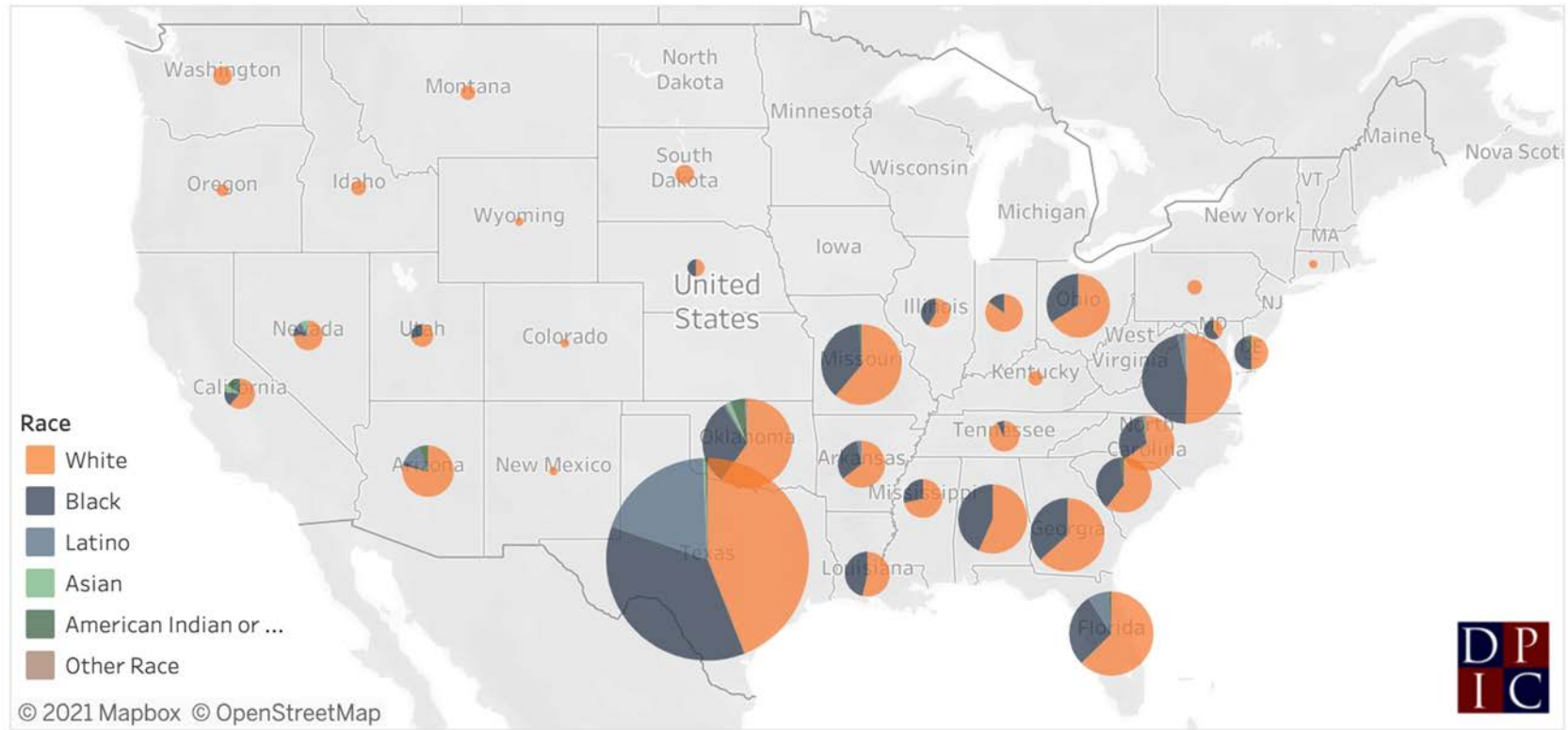


ARMED ROBBERY

Black	White
5	0



U.S. Executions by Race of Defendant

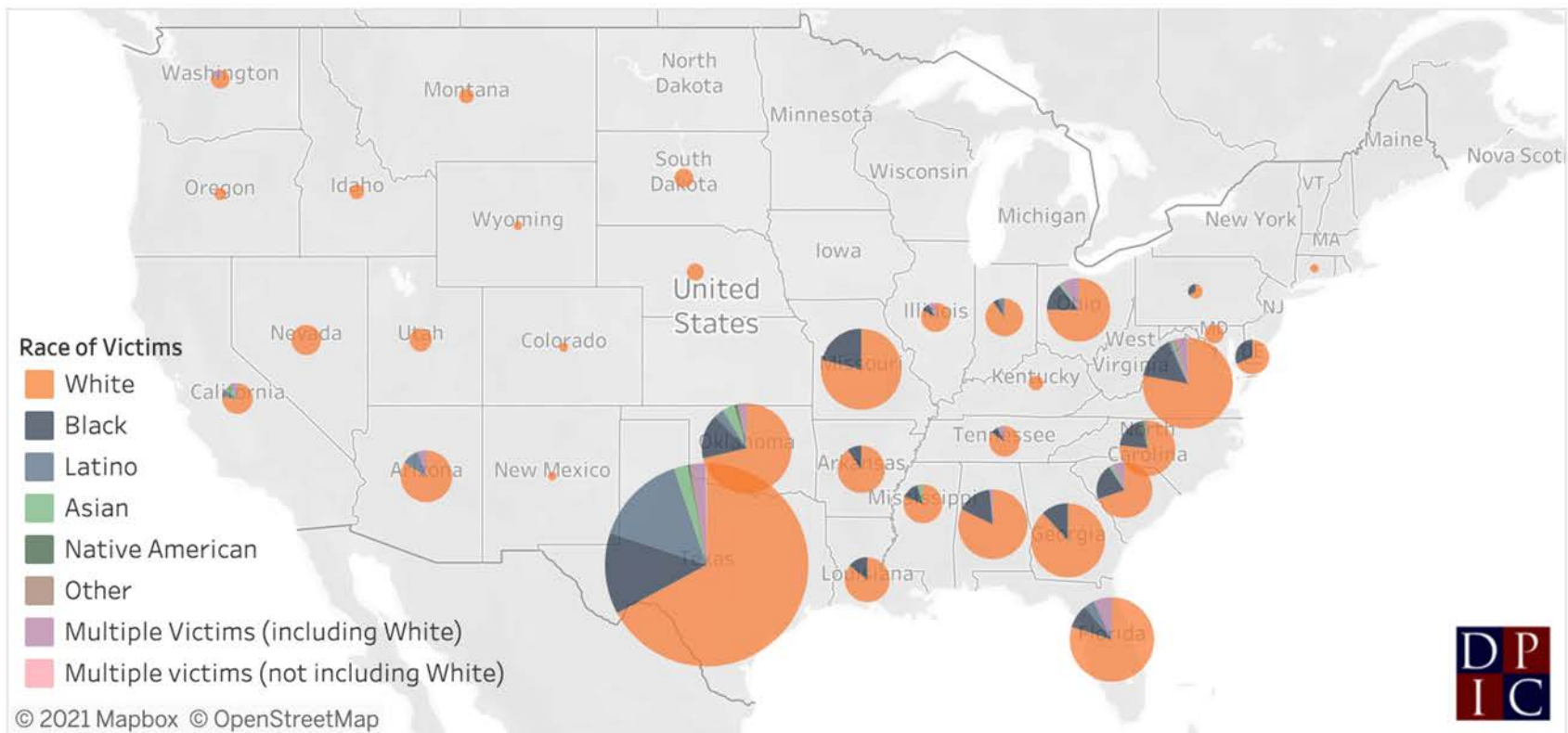


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- White
- Black
- Latino
- Asian
- American Indian or ...
- Other Race



U.S. Executions by Race of Victim



© 2021 Mapbox © OpenStreetMap

Multiple victims (not including White)

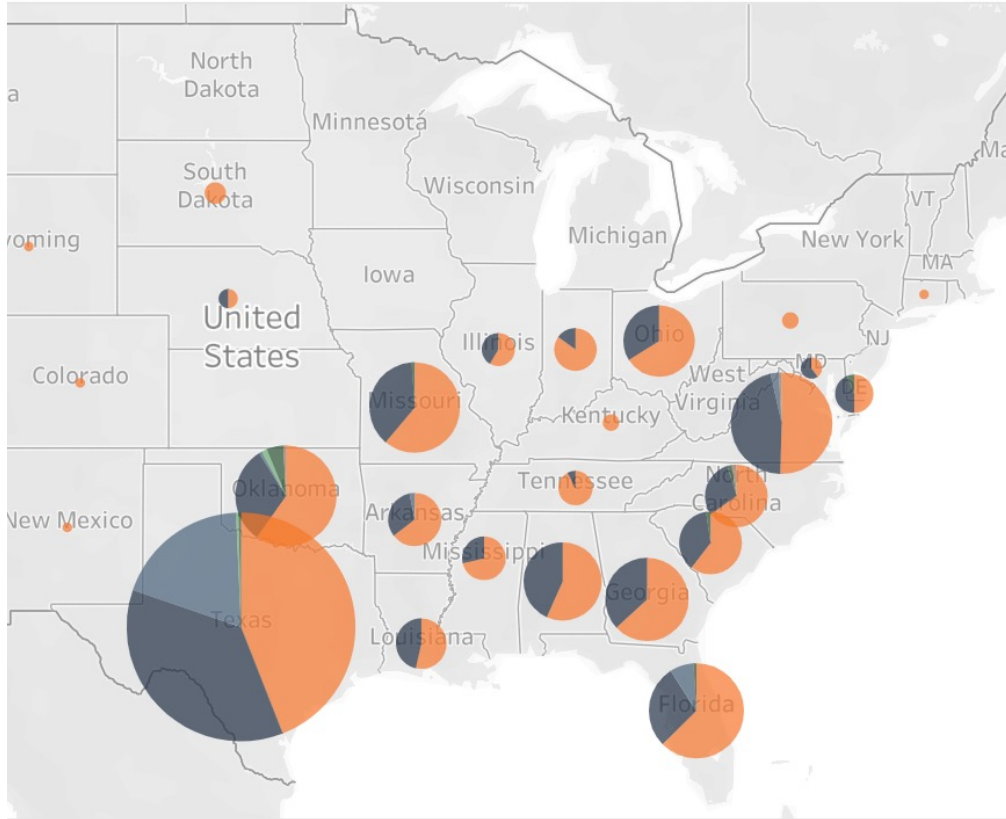
Multiple Victims (including White)

Other

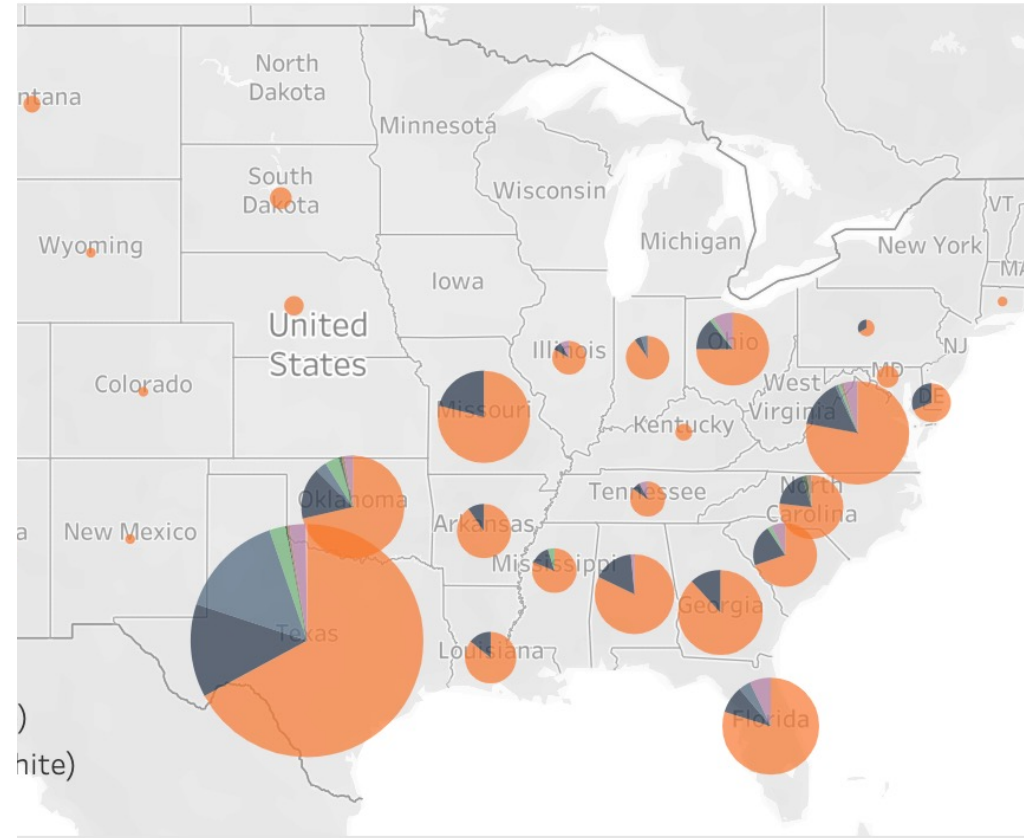
Native American



Executions by Race of Defendant

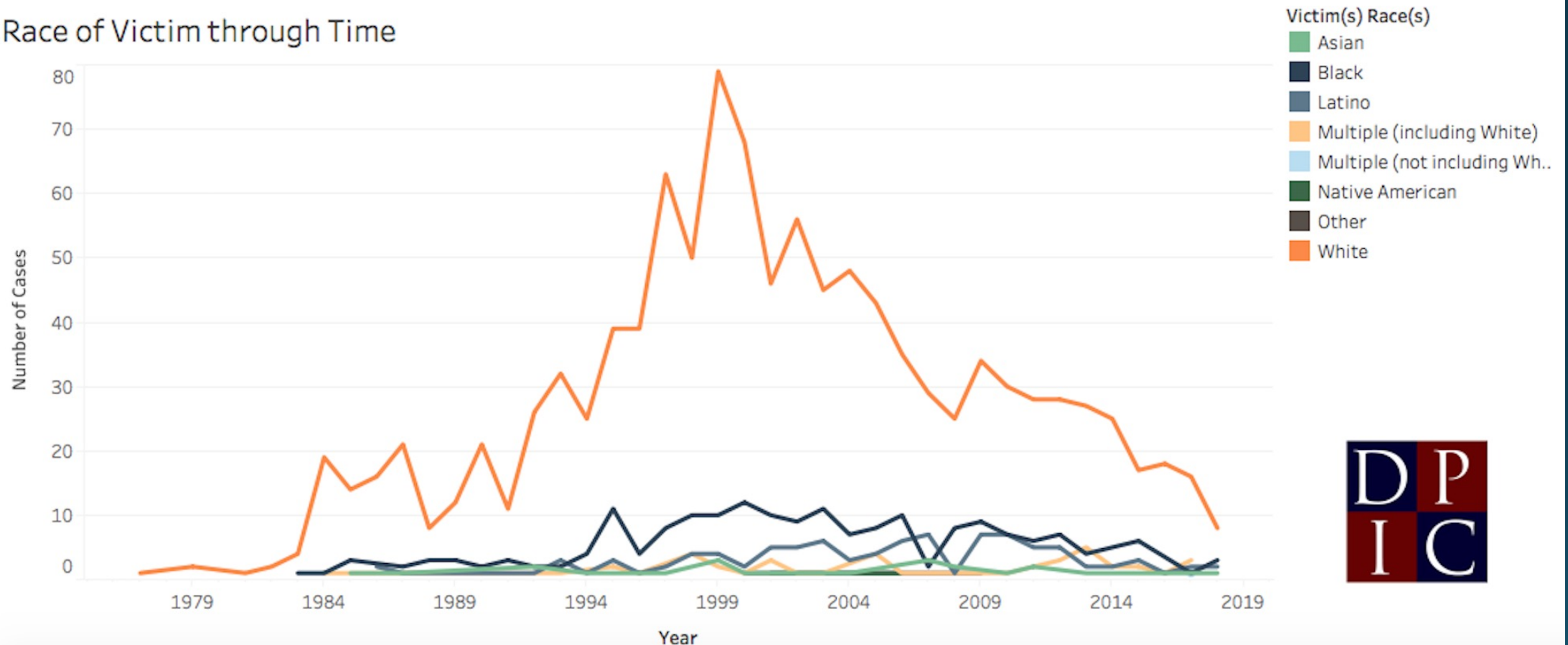


U.S. Executions by Race of Victim

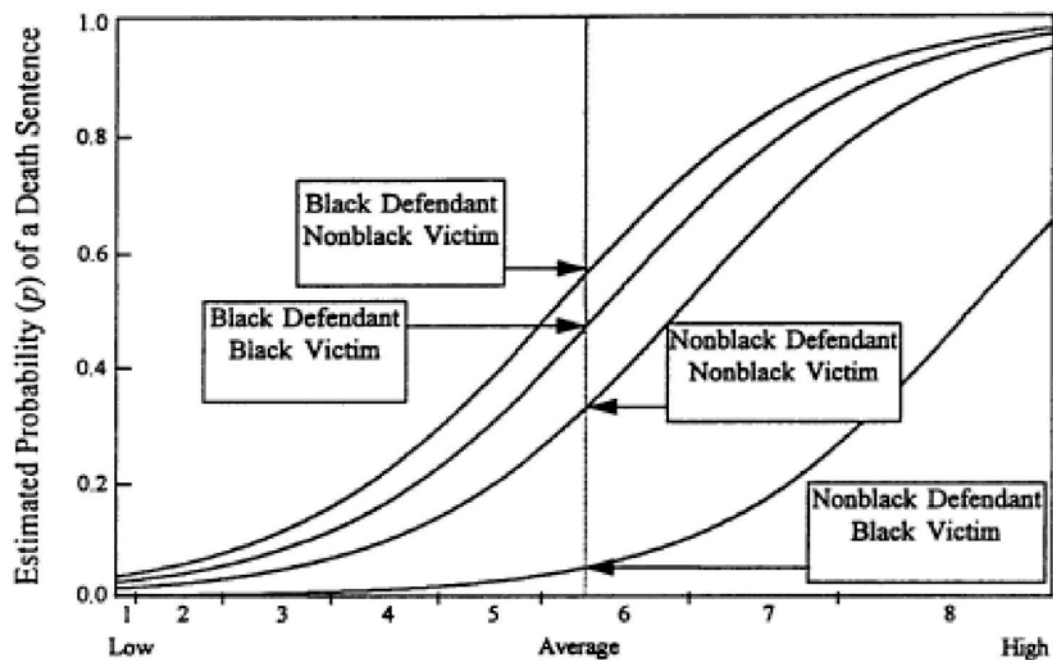


Executions disproportionately involve white victims, suggesting an inappropriate race-based conception of what constitutes the “worst of the worst” killings.

Race of Victim through Time



Estimated Race of Defendant and Race of Victim Effects
in Jury Death Sentencing Decisions Among All Death Eligible Cases
Philadelphia 1983-93

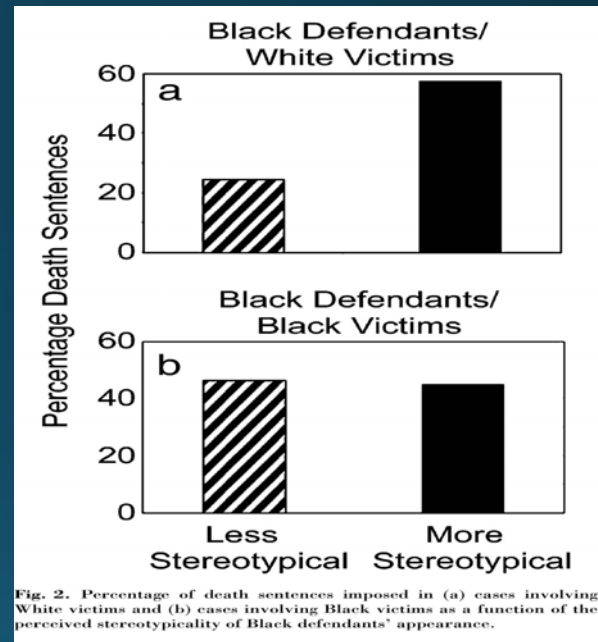


Defendant Culpability Index and Scale Score
Estimated in a Logistic Regression Analysis

The race of defendant/race of victim effect

No matter how terrible a murder is, at all levels of severity, a death sentence is more likely if the defendant is Black and if the victim is not.

In Philadelphia, Pennsylvania, black defendants tried for killing white victims were twice as likely to be sentenced to death if they had "stereotypically" African facial features.

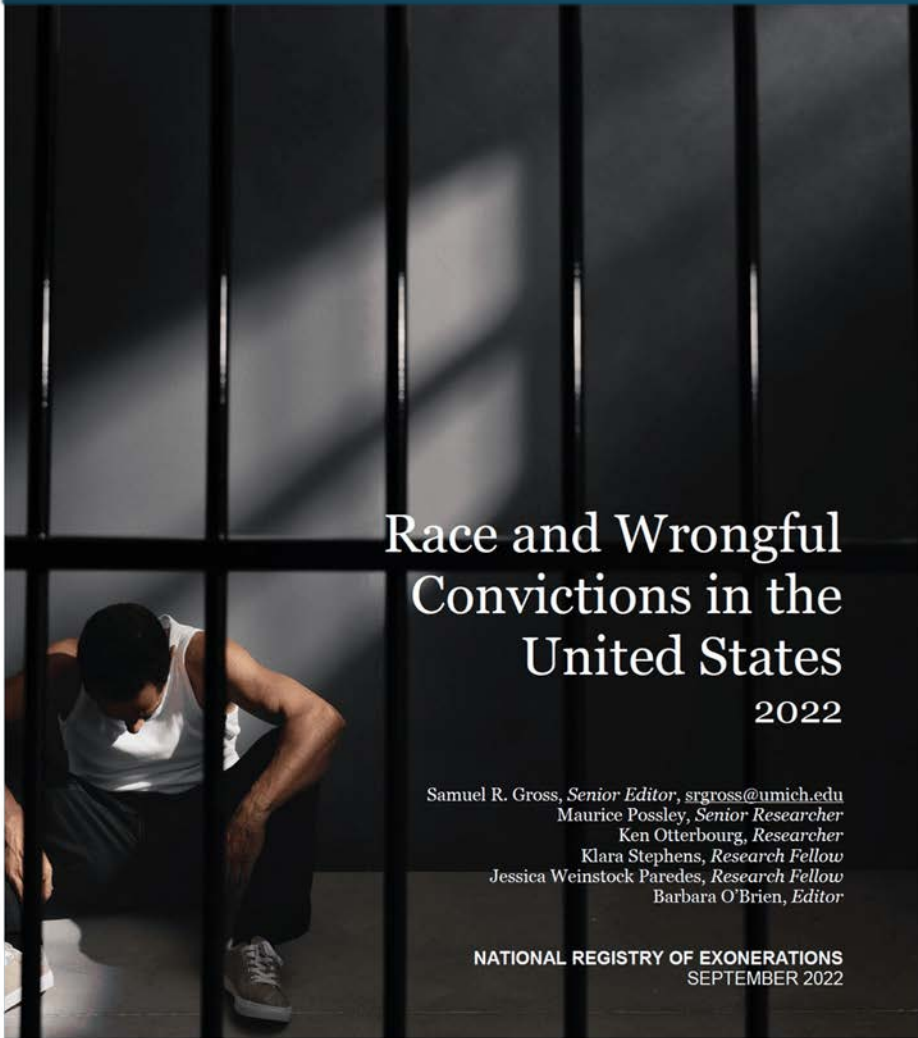




The Faces of Innocence

Since 1973, 190 people in 29 states who have been wrongly convicted and sentenced to death have been exonerated.





Race and Wrongful Convictions in the United States

2022

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Klara Stephens, *Research Fellow*
Jessica Weinstock Paredes, *Research Fellow*
Barbara O'Brien, *Editor*

NATIONAL REGISTRY OF EXONERATIONS
SEPTEMBER 2022

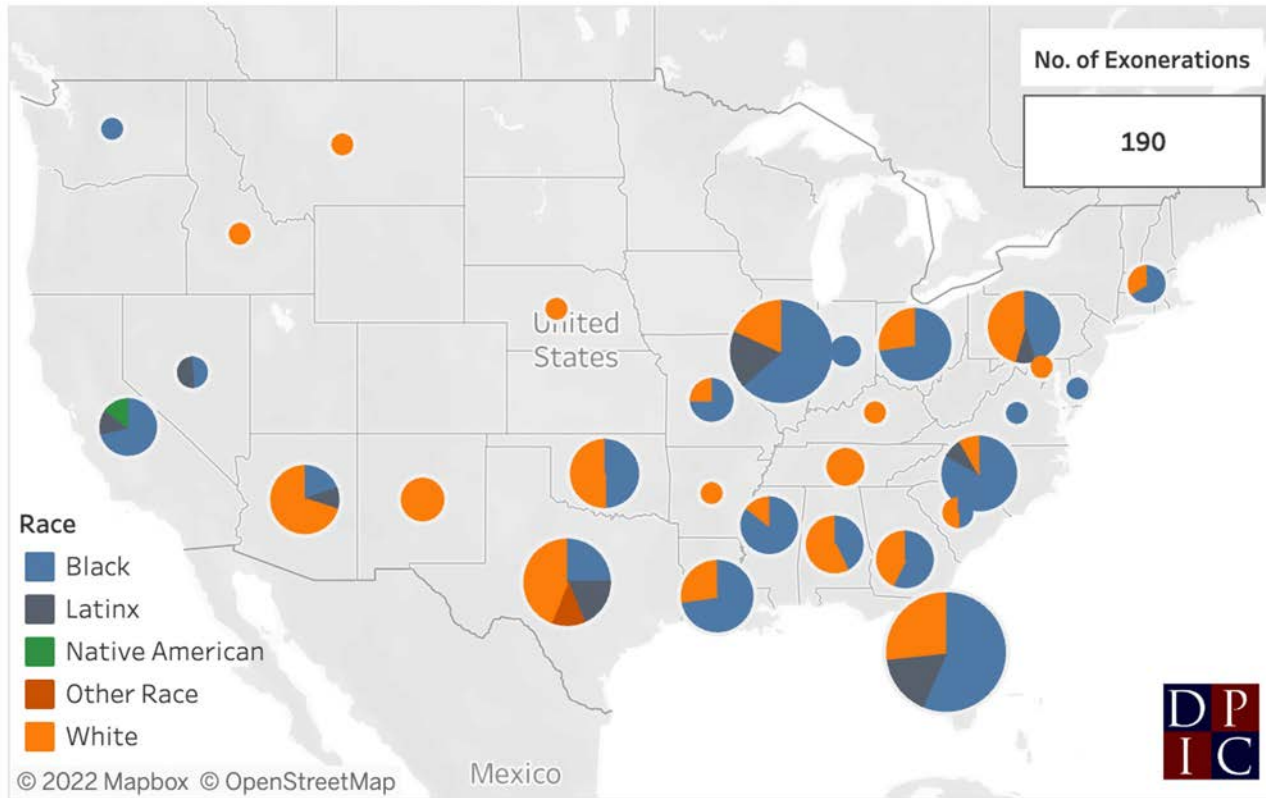
National Registry of Exonerations

A project of the University of California Irvine • Newkirk Center for Science & Society,
the University of Michigan Law School, and Michigan State University College of Law

NEWS

Report: Black People 7.5 Times More Likely to Be Wrongfully Convicted of Murder than Whites, Risk Even Greater if Victim was White

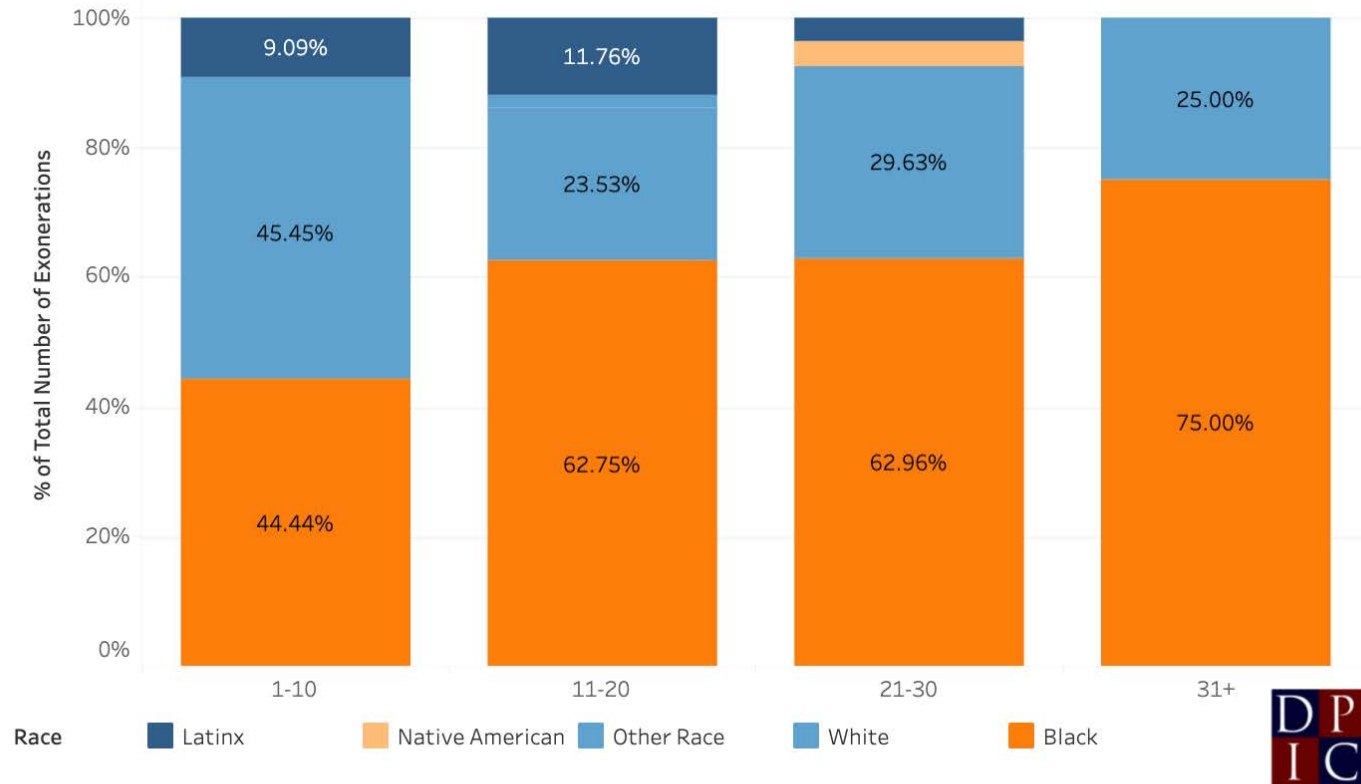
Death-Row Exonerations by Race and State



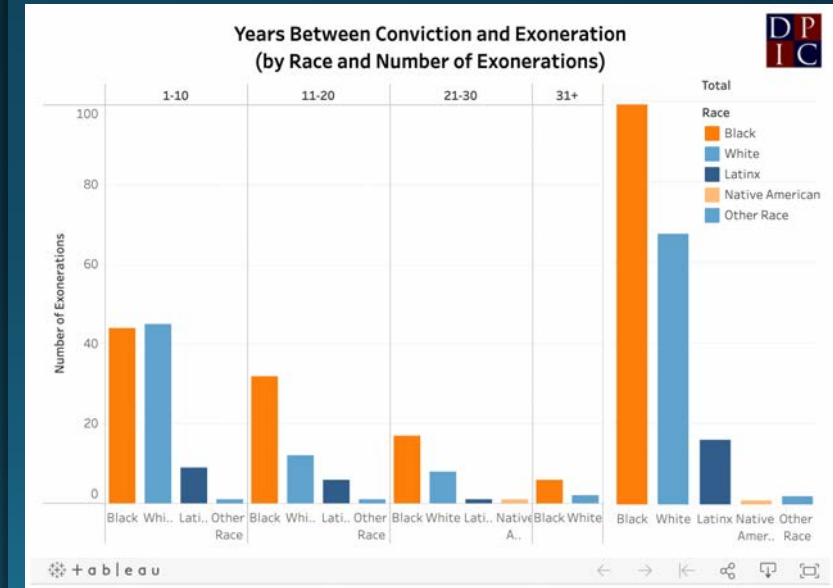
Exonerations by Race

Race	Exonerations
Black	103
White	67
Latino	17
Other	3

Years Between Conviction and Exoneration (by Percentage of Exonerees of Each Race)



It Takes Longer for Wrongfully Convicted Death-Row Prisoners to Be Exonerated if They are Black



Intellectual Disability

Cite as: 536 U. S. ____ (2002)

1

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 00–8452

DARYL RENARD ATKINS, PETITIONER *v.* VIRGINIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
VIRGINIA

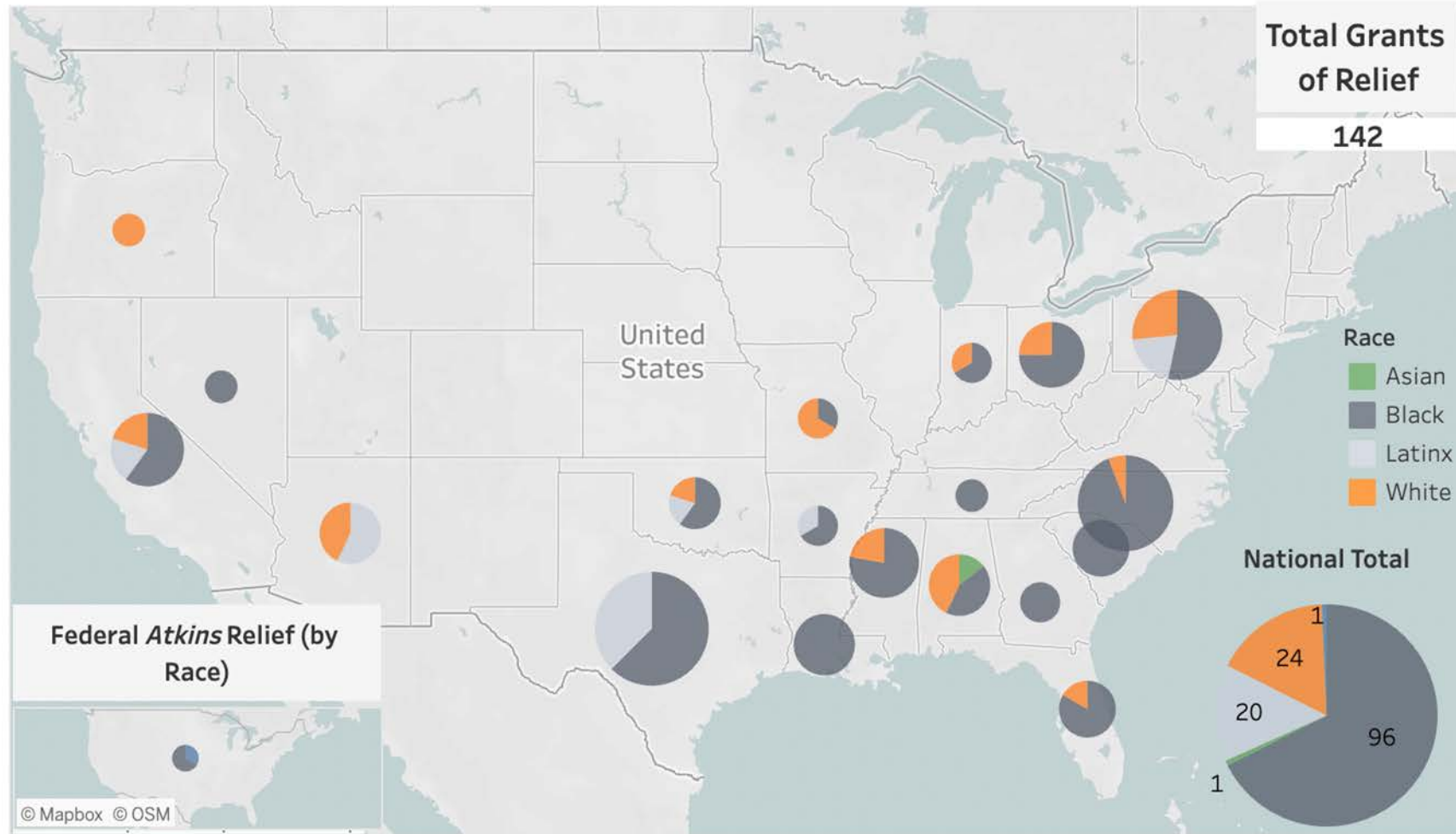
[June 20, 2002]

JUSTICE STEVENS delivered the opinion of the Court.

Those mentally retarded persons who meet the law's requirements for criminal responsibility should be tried and punished when they commit crimes. Because of their disabilities in areas of reasoning, judgment, and control of their impulses, however, they do not act with the level of moral culpability that characterizes the most serious adult criminal conduct. Moreover, their impairments can jeop-

- Prisoners of color constituted **83.1%** of the all death-row prisoners later found to be ineligible for the death penalty because of intellectual disability: **68.3%** were Black, **14.1%** were Latinx.
- At least **29** likely intellectually disabled people have been executed since *Atkins*: **62.1%** were Black and **13.8%** were Latinx.

Atkins Grants of Relief (by Race)



Offenders Under Age 18

Cite as: 543 U. S. ____ (2005)

1

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 03–633

DONALD P. ROPER, SUPERINTENDENT, POTOSI
CORRECTIONAL CENTER, PETITIONER *v.*
CHRISTOPHER SIMMONS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
MISSOURI

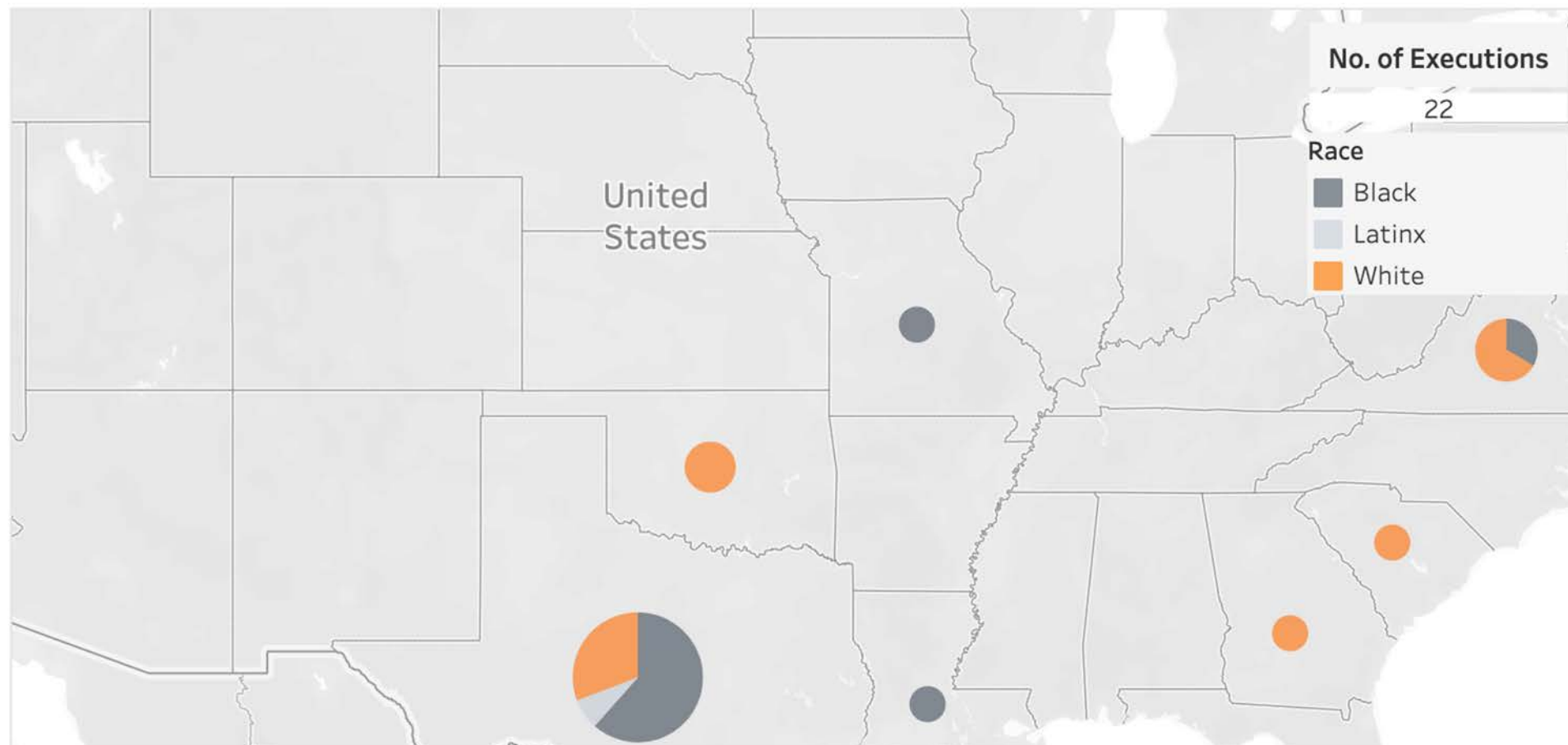
[March 1, 2005]

JUSTICE KENNEDY delivered the opinion of the Court.

This case requires us to address, for the second time in a decade and a half, whether it is permissible under the Eighth and Fourteenth Amendments to the Constitution of the United States to execute a juvenile offender who was older than 15 but younger than 18 when he committed a capital crime. In *Stanford v. Kentucky*, 492 U. S. 361 (1989), a divided Court rejected the proposition that the Constitution bars capital punishment for juvenile offenders in this age group. We reconsider the question.

- **22 prisoners under age 18** were executed in the U.S. before *Roper v. Simmons* was decided.
- **55% were prisoners of color:** **11** were Black, **1** was Latino.

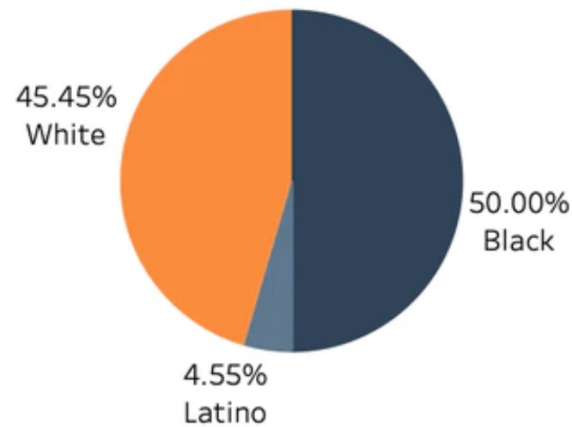
Juveniles Executed in the United States



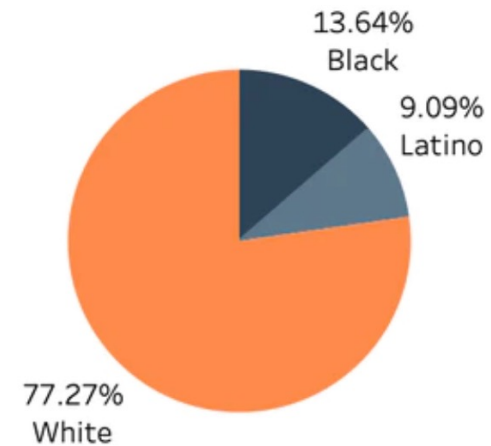
The victims in the juvenile execution cases were disproportionately white.

Race Breakdown of Juveniles Executed in the United States

Race of Executed



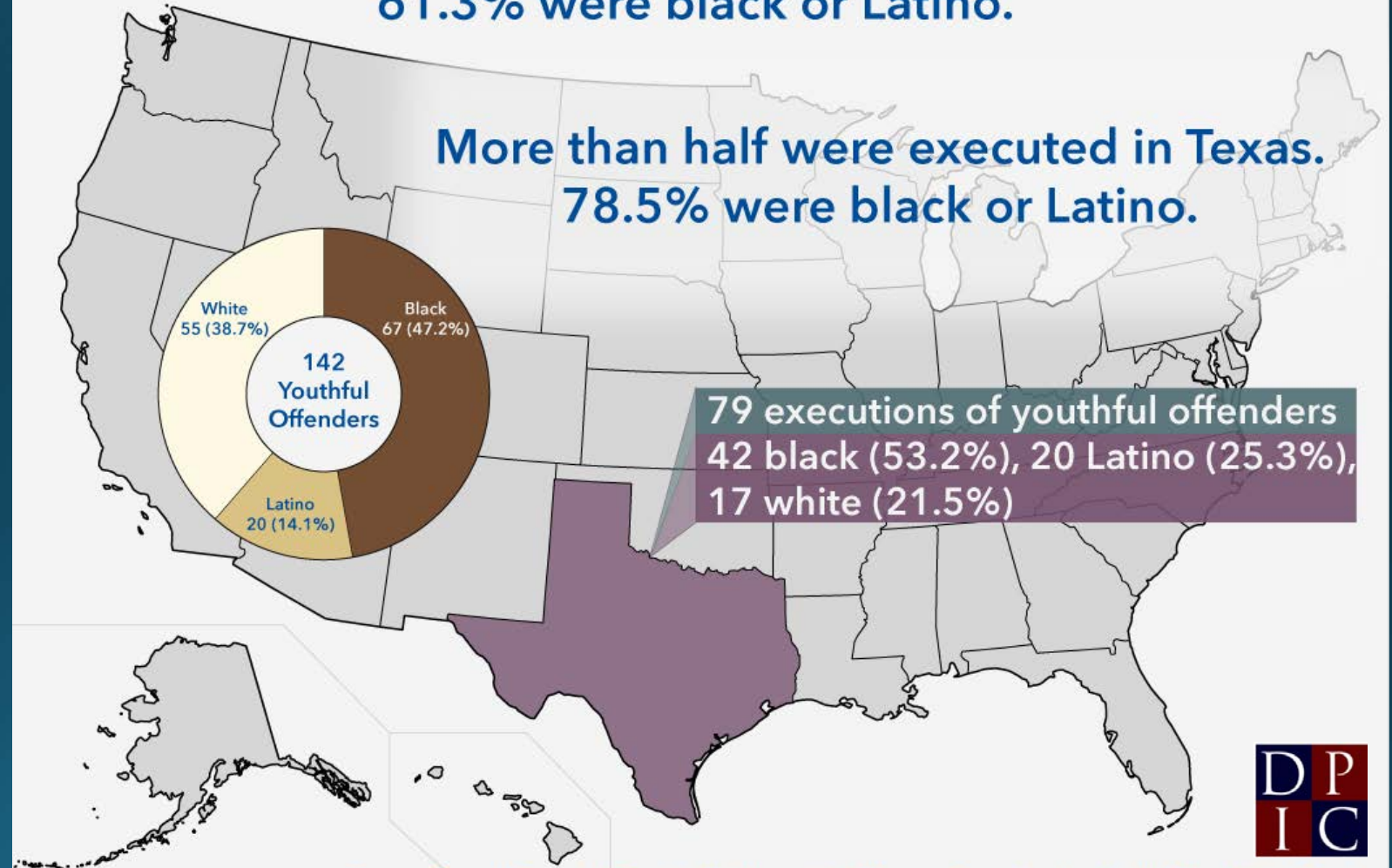
Race of Victim



Youthful offenders are more likely to be executed if they are Black or Latinx.

Disproportionately, death sentences and executions reflect racial stereotyping concerning future dangerousness (see also *Buck v. Davis*)

142 youthful offenders aged 18-20 were executed in the United States between 2000 and 2015. 61.3% were black or Latino.



Source: Oren M. Gur, et al., Capital Punishment for Offenses Committed by Youth: A Population-Based Analysis, American Society of Criminology, Annual Meeting, New Orleans, LA (Nov. 16, 2016).



Death Sentences Imposed in the United States Pre-Roper (by Race and Age)										
Age:	Under 18		18 to 20		21+		Missing		Total	
Race	No.	%	No.	%	No.	%	No.	%	No.	%
White	77	32.77	413	35.09	2,874	48.82	50	24.88	3,414	45.54
Black	115	48.94	567	48.17	2,193	37.25	61	30.35	2,936	39.16
Hispanic	26	11.06	104	8.84	345	5.86	11	5.47	486	6.48
Other	3	1.28	27	2.29	114	1.94	3	1.49	179	2.39
Missing	14	5.96	66	5.61	358	6.08	76	37.81	514	6.86
Total	235	100	1,177	100	5,887	100	201	100	7,497	100

Death Sentences Imposed in the United States After Roper (by Race and Age)										
Age:	Under 18		18 to 20		21+		Missing		Total	
Race	No.	%	No.	%	No.	%	No.	%	No.	%
White	N/A	N/A	29	20.42	465	44.20	9	21.43	503	40.70
Black	N/A	N/A	73	51.41	409	38.88	14	33.33	496	40.13
Hispanic	N/A	N/A	35	24.65	145	13.78	6	14.29	186	15.05
Other	N/A	N/A	3	2.11	29	2.76	0	0.00	32	2.59
Missing	N/A	N/A	2	1.41	4	0.38	13	30.95	19	1.54
Total	N/A	N/A	142	100	1,052	100	42	100	1,236	100

- A DPIC analysis found that the more vulnerable death-sentenced defendants were as an age class, the more the death sentences imposed on that class of defendants were racially disproportionate.

Juries and Racial Bias in Death Penalty Cases

- Death-qualification, peremptory strikes, and human rights violations against *both defendants and jurors*.

Symbolic Endorsement of Racism



Confederate flag and memorial outside Caddo Parish Courthouse, Shreveport, Louisiana, 2010

WHITEWASHING THE JURY BOX

How California Perpetuates the Discriminatory
Exclusion of Black and Latinx Jurors



Behavioral Sciences and the Law
Behav. Sci. Law 25: 857–867 (2007)
Published online in Wiley InterScience
(www.interscience.wiley.com) DOI: 10.1002/bsl.791



Death Qualification and Prejudice: The Effect of Implicit Racism, Sexism, and Homophobia on Capital Defendants' Right to Due Process[†]

Brooke Butler, Ph.D.^{*,‡}

Deviant Behavior, 25: 151–167, 2004
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ISSN: 0163-9625 print/1521-0456 online
DOI: 10.1080/01639620490266916

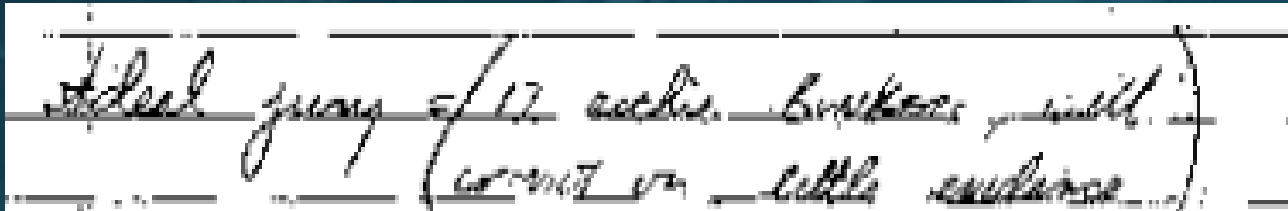


guilty until proven innocent: conviction orientation, racial attitudes, and support for capital punishment

Robert L. Young
University of Texas at Arlington,
Arlington, Texas, USA

Juries and Racial Bias in Death Penalty Cases

"Ideal jury = 12 Archie Bunkers, will convict on little evidence"



Ideal jury = 12 Archie Bunkers, will
convict on little evidence

"Let's face it, ... there's the blacks from the low-income areas, [they're] less likely to convict. . . . There is a resentment for law enforcement, there's a resentment for authority and, as a result, you don't want those people on your jury. ..."



"...And it may appear as if you're being racist or whatnot, but, again, you are just being realistic. You're just trying to win the case."

Juries and Racial Bias in Death Penalty Cases

008. CAGLE RICKEY <i>Fireman City of Rome</i> 3451 CAVE SPRING RD SW ROME GA 30161 <i>See attached sheet</i>	022. HARDOE EVELYN <i>Age 69. Retired. Her husband own their home.</i> 394 WEST ROSS ST ROME GA 30161						
009. HOOD EDDIE <i>Age 47. Men. GA. Kraft</i> 13 COPELAND ST <i>See attached sheet</i> ROME GA 30161	023. COULTAS <i>Works for Security Army College</i> 482 OLD <table border="1"><tr><td><input checked="" type="checkbox"/></td><td>X¹ Jones - M, F, maid</td></tr><tr><td><input checked="" type="checkbox"/></td><td>X¹ H. Lamb - M, M, <i>Some, Texas</i></td></tr><tr><td><input checked="" type="checkbox"/></td><td>X¹ 133. Collier - M, F, <i>WJ</i></td></tr></table> ROME GA 30161	<input checked="" type="checkbox"/>	X ¹ Jones - M, F, maid	<input checked="" type="checkbox"/>	X ¹ H. Lamb - M, M, <i>Some, Texas</i>	<input checked="" type="checkbox"/>	X ¹ 133. Collier - M, F, <i>WJ</i>
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010. NICHOLSON JOYCE H <i>Auto. Elms. Sch. 2 Elem. Sch.</i> 5 CONWAY PL ROME GA 30161	024. HOBGOOD <i>husband</i> 28 PINE VALLEY RD ROME GA 30161						
011. MCGINNIS NONA ADLINE <i>Retired</i> 7 MCGINNIS DR SE ROME GA 30161	025. DEDE 28 ROME						
012. CLEMENTS J TERRY 201 TURNER CHAPEL RD ROME GA 30161	026. STAN 296 ROME						
013. HOELZER MARGARET D <i>Worked Radio Tech out of st.</i> 907 EAST 2ND AVE ROME GA 30161	027. <i>She is</i> HOUS 333 ROME						
014. STANSELL MARY H <i>Works for Power Co.</i> 1928 L TEXAS VLY RD NW ROME GA 30161	028. JOHN <i>Age 56</i> 5 ROONEY RD ROME GA 30161						

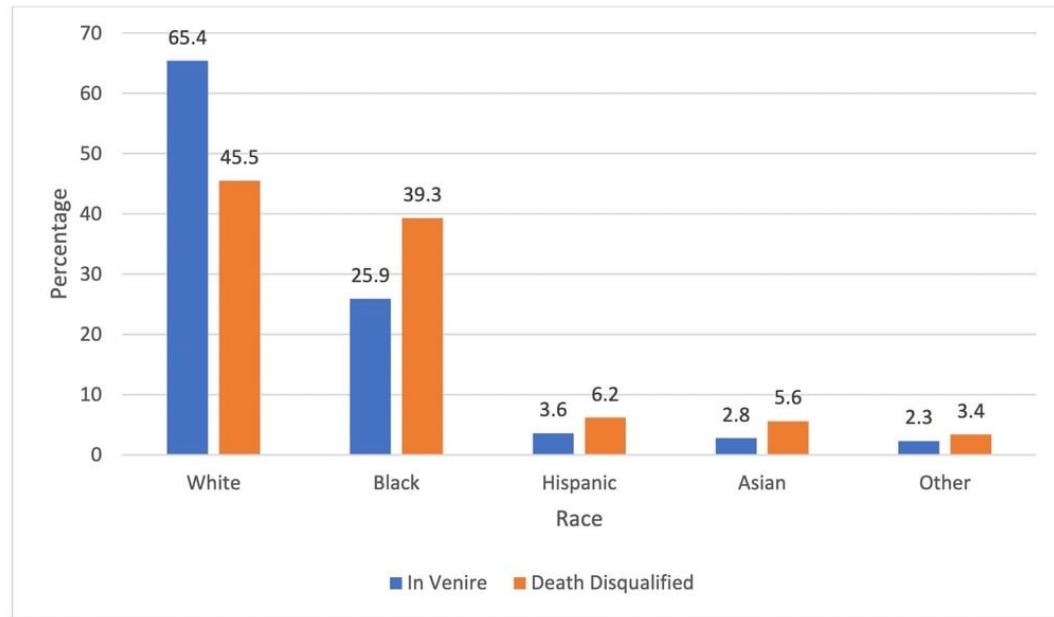
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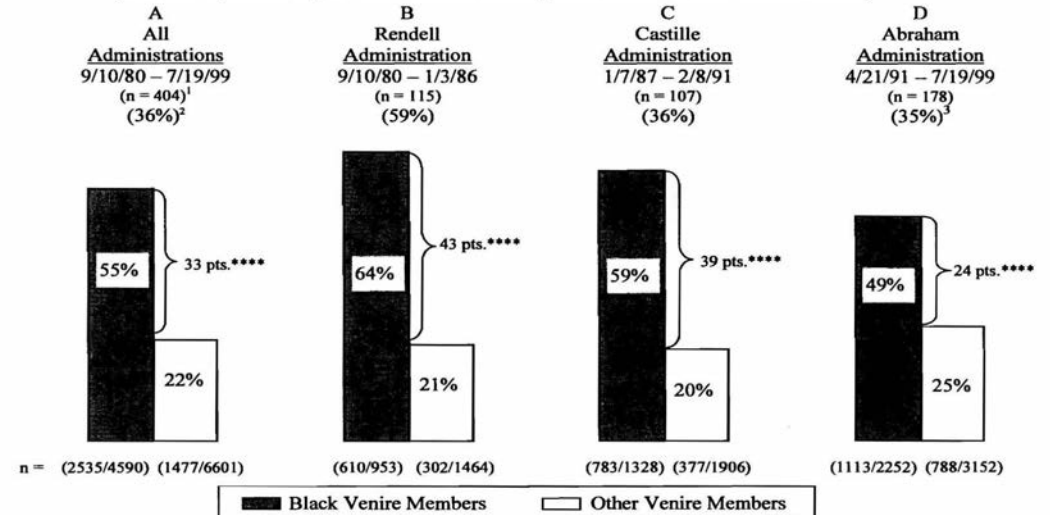
Figure 1. Race of Persons in Entire Venire and Race of Persons Excluded for Death Disqualification (Percentages)



A two-year Dallas Morning News investigation of jury selection in Dallas County has revealed that prosecutors exclude blacks from juries at more than twice the rate they reject whites, and that race is the most important personal trait affecting which jurors prosecutors reject. The paper's review also found that when potential black and white jurors answered key questions about criminal justice issues the same way, blacks were rejected at a higher rate.

FIGURE 3
UNADJUSTED RACE DISPARITIES IN PROSECUTORIAL PEREMPTORY STRIKE RATES IN 404 PHILADELPHIA CAPITAL TRIALS BETWEEN 9/10/1980 AND 7/19/1999 BASED ON 98% RELIABLE VENIRE MEMBER RACE ESTIMATES FOR ALL CASES AND BROKEN DOWN BY DISTRICT ATTORNEY ADMINISTRATIONS

(The bars represent the prosecutorial strike rates against black and other venire members.)



46. O'Brien testified, without contradiction, to large disparities in strike rates based on race.¹¹ Across all strike-eligible venire members in the MSU Study, the Court finds that prosecutors statewide struck 52.6% of eligible black venire members, compared to only 25.7% of all other eligible venire members. This difference is statistically significant with a *p*-value of <0.001. The probability of this disparity occurring in a race-neutral jury selection process is less than one in ten trillion. DE3, p. 22. Katz, the state's statistical expert, concurred that this disparity is statistically significant. HTp. 1944.

Clockwise from upper left, Duval County, Florida death qualification; Philadelphia peremptory strikes; North Carolina Racial Justice Act data; Dallas Morning News study.

Washington State

NEWS

Washington Supreme Court Declares State's Death Penalty Unconstitutional

 SHARE  TWEET  EMAIL

Posted on Oct 12, 2018

ARBITRARINESS RACE WASHINGTON



Finding that the death penalty "is imposed in an arbitrary and racially biased manner," a unanimous **Washington Supreme Court** has struck down the state's capital-punishment statute as violating Washington's state constitutional prohibition against "cruel punishment." The court's ruling, authored by **Chief Justice Mary E. Fairhurst** and issued on October 11, 2018, declared: "The death penalty, as administered in our state, fails to serve any legitimate penological goal; thus, it violates article I, section 14 of our state constitution." The decision also converted the sentences of all eight people on the state's death row (pictured) to life

imprisonment without possibility of release. The court's action makes Washington the twentieth U.S. state to have judicially or legislatively abolished the death penalty, and the eighth to have done so this century. **Governor Jay Inslee**, who imposed a [moratorium](#) on all executions in 2014, hailed the ruling, saying, "Today's decision by the state Supreme Court thankfully ends the death penalty in Washington. ... This is a hugely important moment in our pursuit for equal and fair application of justice."

FILE
IN CLERKS OFFICE
SUPREME COURT, STATE OF WASHINGTON
DATE OCT 11 2018
Fairhurst, CJ.
CHIEF JUSTICE

This opinion was filed for record
at 8:00am on Oct 11, 2018
Susan L. Carlson
SUSAN L. CARLSON
SUPREME COURT CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,) No. 88086-7
)
 v.) EN BANC
)
 ALLEN EUGENE GREGORY,) FILED OCT 11 2018
)
 Appellant.)

FAIRHURST, C.J.—Washington's death penalty laws have been declared unconstitutional not once, not twice, but three times. *State v. Baker*, 81 Wn.2d 281, 501 P.2d 284 (1972); *State v. Green*, 91 Wn.2d 431, 588 P.2d 1370 (1979); *State v. Frampton*, 95 Wn.2d 469, 627 P.2d 922 (1981).¹ And today, we do so again. None

¹ Arguably, it has occurred four times because a federal district court judge found that our statutory proportionality review of death sentences violated due process. *Harris ex rel. Ramseyer v. Blodgett*, 853 F. Supp. 1239, 1288-91 (W.D. Wash. 1994), *aff'd sub nom. on other grounds, Harris ex rel. Ramseyer v. Wood*, 64 F.3d 1432 (9th Cir. 1995). But we considered and rejected the claim. *In Re Pers. Restraint of Benn*, 134 Wn.2d 868, 925-26, 952 P.2d 116.

Study proves death penalty imposed by Washington jurors in a racially biased manner

Race, Death, and Justice: Capital Sentencing in Washington State, 1981-2014

Katherine Beckett¹, Heather Evans²



¹ Professor in the Department of Sociology and the Law, Societies, and Justice Program at the University of Washington,

² Ph.D Candidate in the Department of Sociology at the University of Washington

Citation: 6 COLUM. J. RACE & L. 77 (2016)

- Over a 25-year period of Washington State capital prosecutions, juries were 4.5 times more likely to impose a death sentence on a black defendant than on a white defendant in a similar case.

- “The death penalty is invalid because it is imposed in an arbitrary and racially biased manner.”

State v. Gregory, No. 88086-7

of these prior decisions held that the death penalty is per se unconstitutional, nor do we. The death penalty is invalid because it is imposed in an arbitrary and racially biased manner. While this particular case provides an opportunity to specifically address racial disproportionality, the underlying issues that underpin our holding are rooted in the arbitrary manner in which the death penalty is generally administered. As noted by appellant, the use of the death penalty is unequally applied—sometimes by where the crime took place, or the county of residence, or the available budgetary resources at any given point in time, or the race of the defendant. The death penalty, as administered in our state, fails to serve any legitimate penological goal; thus, it violates article I, section 14 of our state constitution.

Racist expert testimony: the Duane Buck case

Race → future danger



Racism and dog whistles in prosecutorial argument

NEWS

Circuit Court Overturns South Carolina Death Sentence for Prosecutor's Racially Inflammatory Argument

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Posted on Nov 22, 2016

RACE SOUTH CAROLINA



The U.S. Court of Appeals for the Fourth Circuit has upheld a federal district court's decision ordering a new sentencing hearing for **Johnny Bennett**, a black man who was sentenced to death by an all-white **South Carolina** jury in a trial tainted by a prosecutor's racially-inflammatory cross-examination and argument.

Bennett was prosecuted by Donald Myers (pictured), known as "Death Penalty Donnie" for having sent 28 South Carolina defendants to death row. In response to defense argument at Bennett's sentencing proceedings in 2000 that Bennett would not pose a future danger to society if incarcerated for life, Myers repeatedly invoked violent animal references, calling Bennett "King Kong on a bad day," a "caveman," a "mountain man," a "monster," a "big old tiger," and "[t]he beast of burden."

Earlier in the trial, Meyers had elicited irrelevant testimony that a white witness whom Bennett had assaulted when he was a juvenile had dreamt of "being chased by black savages." The prosecutor also gratuitously asked a witness about sexual relations Bennett had had with a "blonde-headed" prison guard. A juror later described Bennett as "just a dumb ni**er."

IMPLICIT RACIAL BIASES IN PROSECUTORIAL SUMMATIONS: PROPOSING AN INTEGRATED RESPONSE

Praatika Prasad*

Racial bias has evolved from the explicit racism of the Jim Crow era to a more subtle and difficult-to-detect form: implicit racial bias. Implicit racial biases exist unconsciously and include negative racial stereotypes and associations. Everyone, including actors in the criminal justice system who believe themselves to be fair, possess these biases. Although inaccessible through introspection, implicit biases can easily be triggered through language. When trials involve Black defendants, prosecutors' summations increasingly include racial themes that could trigger jurors' implicit biases, lead to the perpetuation of unfair stereotypes, and contribute to racial injustice and disparate outcomes.

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NEWS RACE

June 12th, 2020

Study: Dehumanizing Belief Systems Linked to Support for Guns Rights, the Death Penalty, and Anti-Immigration Practices

A new study in the Proceedings of the National Academy of Sciences has documented a strong link between individuals who hold dehumanizing belief systems and support for capital punishment. The study by University of Oregon Journalism and Communications ...



B. Animal Imagery and the Black Brute

Prosecutors' use of animal imagery and the "black brute" caricature in their closing arguments dehumanizes Black defendants.¹³⁸ Dehumanization reduces white persons' empathy for Black people, which could explain why violent crimes against white victims typically trigger harsher punishments than crimes against people of color, particularly when the offender is Black and the victim is white.¹³⁹

Being Black Can Act As An 'Aggravating Factor'

