

The Effects of Race on Sentencing in Capital Punishment Cases

Throughout history, minorities have been ill-represented in the criminal justice system, particularly in cases where the possible outcome is death. In early America, blacks were lynched for the slightest violation of informal laws and many of these killings occurred without any type of due process. As the judicial system has matured, minorities have found better representation but it is not completely unbiased. In the past twenty years strict controls have been implemented but the system still has symptoms of racial bias. This racial bias was first recognized by the Supreme Court in *Furman v. Georgia*, 408 U.S. 238 (1972). The Supreme Court Justices decide that the death penalty was being handed out unfairly and according to Gest (1996) the Supreme Court felt the death penalty was being imposed "freakishly" and "wantonly" and "most often on blacks." Several years later in *Gregg v. Georgia*, 428 U.S. 153 (1976), the Supreme Court decided, with efficient controls, the death penalty could be used constitutionally. Yet, even with these various controls, the system does not effectively eliminate racial bias. According to Professor Steven Goldstein of Florida State University, "There are so many discretionary stages: whether the prosecutor decides to seek the death penalty, whether the jury recommends it, whether the judge gives it" (As cited in Smolowe, 1991, 68). It is in these discretionary stages that racial biases can infect the system of dealing out death sentences. Smolowe (1991) shows this infection by giving examples of two cases decided in February of 1991, both in Columbus. The first example is a white defendant named James Robert Caldwell who was convicted of stabbing his 10 year old son repeatedly and raping and killing his 12 year old daughter. The second example is of a black man, Jerry Walker, convicted of killing a 22-year-old white man while robbing a convenience-store. Caldwell's trial lasted three times as long as Walker's and Caldwell received a life sentence while Walker received a death sentence. In these examples, it is believed that not only the race of the victims, but also the value of the victims, biased the sentencing decisions. The 22-year-old man killed by Walker was the son of a Army commander at Fort Benning while Caldwell's victims were not influential in the community. In examples such as these, it becomes evident that racial bias, in any or all of the discretionary stages, becomes racial injustice in the end. Smolowe (1991) also makes the point that Columbus is not alone: "A 1990 report prepared by the government's General Accounting Office found 'a pattern of evidence indicating racial disparities in the charging, sentencing and imposition of the death penalty.'"

In an article by Seligman (1994), Professor Joseph Katz of Georgia State "and other scholars have made a separate point about bias claims based on the 'devalued lives' of murder victims." Seligman also asserts that those claiming bias believe that it is in the race of the victim and not the race of the defendant, and because the lives of blacks have been "devalued," people who murder blacks are less likely to receive death sentences than those who murder whites" (Seligman, 1994, 113). An Iowa Law Professor, David Baldus, also found that "juries put a premium on the lives of victims" (As cited in Lacayo, 1987, 80). In a study of more than 2,000 Georgia murder cases, Baldus found that "those who killed whites were 4.3 times as likely to receive the death penalty as those who killed blacks. And blacks who killed whites were most likely of all to be condemned to die" (As cited in Lacayo, 1987, 80). According to Gest (1996), of those executed since the reinstatement of the death penalty, 80% have murdered whites, while only 12% of those executed in the same time period have had black victims. These figures show an obvious trend of racial bias against those who murdered whites. Could these disparities be because, as sociologist Michael Radelet put it, "Prosecutors are political animals,

they are influenced by community outrage, which is subtly influenced by race," or is it because "it is built into the system that those in the predominant race will be more concerned about crime victims of their own race," as stated by Welsh White of the University of Pittsburgh Law School (As cited in Gest, 1986, 25). Because of the immense possibility of discrimination in sentencing in capital punishment cases, each stage of prosecution must be controlled as much as possible. Although these offenders are the worst the criminal justice system has to offer, prosecutors must be encouraged to consider the crime and not the race of the victim or offender and the judge must attempt to exclude the same racial issue when deciding the punishment. I believe Justice Brennan said it best when he wrote the dissenting opinion in a capital punishment appeal. He wrote, "It is tempting to pretend that minorities on death row share a fate in no way connected to our own, that our treatment of them sounds no echoes beyond the chambers in which they die. Such an illusion is ultimately corrosive, for the reverberations of injustice are not so easily confined" (As cited in Lacayo, 1987, 80). With great effort, the judicial controls can begin to battle the racial bias of Americas Judicial system but to completely eliminate such a bias, the people involved in the judicial process must learn to look past the race of the offender or the value of the victim, and instead focus on circumstances of the crime.