

## Who Gets Life and Who Gets Death: Class, Race and Geography

We all expect justice to be blind. Otherwise it's not justice at all. Yet geography, poverty, and race continue to determine who lives and who dies. When the public sees this level of disparity in the death penalty, it compromises the integrity of the entire criminal justice system.

"We need to face the ugly truth that the death penalty sets some crimes and some victims apart as more important than others. How do we make these decisions? Is it quantity of lives lost? The location of the murder? The death penalty attempts to identify 'the worst' crimes. There is just no way for us to reasonably do this, and it is hurtful that we try."

*Vicky Coward, mother of a murdered son  
"Murder Victim's Mother Suggests the Big Picture Is More Important" Connecticut News Junkie, May 13, 2011*

"Our conclusion is that [Nebraska's death penalty system] is a classic example of disparate treatment, that is, people are being treated differently on the basis of factors that have nothing whatever to do with their culpability but rather on the socioeconomic status of the victim that they have killed."

*Prof. David Baldus, Joseph B. Tye Professor of Law, University of Iowa College of Law  
Testimony before the Nebraska Judiciary Committee, October 17, 2001*

"I can...tell you that most prosecutors across our state feel torn about the [death penalty]...Most of us agree, though, that the death penalty is not working in Nebraska and our state would be better off to replace the current penalties with secure life-without-parole sentences."

*Brent M. Bloom, former chief deputy Douglas County Prosecutor  
Testimony to the Nebraska Judiciary Committee, January 29, 2001*

“Who gets life and who gets death in Nebraska...depends more on geography, class, race, and the discretion of prosecutors than on the heinousness of the crime.”

*“The Disposition of Nebraska Capital & Non-Capital Homicide Cases (1973-1999): A Legal & Empirical Analysis,” 2001.*

## **Just the Facts:**

- ◆ Individual prosecutors have broad discretion to decide whether to seek the death penalty. Indeed, prosecutorial discretion is one of the hallmarks of our nation’s legal system. However, the definition of “death eligible” is so broad that there is little guidance for prosecutors to make that determination. That leaves room for other factors to seep into the decision making process, even despite a prosecutor’s best intentions.
- ◆ Where a crime occurs can play as big a role as the nature of the crime in determining who will live and who will die. Similar murders might get 40 years in one county and death in the next county over.
- ◆ People who do not support the death penalty are excluded from serving on capital juries. The result is that large segments of the population can’t participate in the most serious cases.
- ◆ In Nebraska, the overall error rate in death penalty cases is 68 percent, meaning that courts have found serious, reversible error in nearly 7 of every 10 death penalty cases.
- ◆ Between 1973 and 2007, there were approximately 1,450 murders in Nebraska. Of these, some 235 were “death-penalty eligible”, and prosecutors sought the death penalty in 103 cases. Of those 103 cases, 31 resulted in a death sentence. Of these, 13 sentences were commuted, 10 are on appeal, 4 died in prison, 1 was freed, and 3 were executed.
- ◆ Defendants in death penalty cases in Nebraska whose victims are wealthy are 5.6 times more likely to be sentenced to death than are those whose victims are poor.