

COMPROMISED JUSTICE

How A Legacy of Racial Violence Informs
Missouri's Death Penalty Today

DEATH PENALTY INFORMATION CENTER



*Photo & Copyright 1896
By D.S. Cole. Carrollton*

com·pro·mised

adjective

- 1: made vulnerable (as to attack or misuse) by unauthorized access, revelation, or exposure
- 2: impaired or diminished in function: weakened, damaged, or flawed
- 3: exposed to suspicion or discredit : revealed as or suspected of being disreputable, untrustworthy, etc.

jus·tice

noun

- 1: the quality of being just, impartial, or fair
- 2: conformity to truth, fact, or reason

“ “ **If the people today have no ownership over the things that happened yesterday, then why is it still being perpetuated?** ” ”

Missouri State Sen. Karla May, 2023



Contents

Introduction	4
Early death penalty statutes identified specific crimes that were only punishable by death if committed by an enslaved person.	5
Despite race-neutral death penalty laws, enslaved people were four times more likely than whites to be executed	6
The first recorded lynching in U.S. history occurred in Missouri, and lynchings continued to terrorize Black communities for more than a century.	7
A Violent Racial History	10
The legacy of racial violence and discrimination continues to affect the use of capital punishment in Missouri.	14
Capital cases with white victims are seven times more likely to result in an execution than those with Black victims.	17
Prosecutors wield significant power over decisions in death penalty cases, and studies suggest racial bias continues to influence them.....	18
Prosecutors are less than half as likely to file capital charges in cases with Black victims compared to cases with white victims.....	18
A closer look at outlier jurisdictions: St. Louis County and St. Louis city	18
Death-sentenced Black men are overrepresented among cases that were reversed or resulted in exonerations due to official misconduct.....	24
Continuing racial biases in policing affect homicide clearance rates and police interaction with Black communities.....	26
Capital sentencing continues to be dominated by all-white or nearly all-white juries.	29
Norris Holder.....	33
Missouri prosecutors use “ethnic adjustments” to make Black people with intellectual disability eligible for the death penalty despite a U.S. Supreme Court prohibition.	34
Ernest Johnson	36
Conclusion	39



Introduction

This report focuses on the death penalty — its past and present use. By studying who is targeted, prosecuted, and executed in Missouri, both legally and illegally, clear patterns emerge.

It was a compromise that admitted Missouri into the Union as a state in 1821, temporarily settling a question that would soon divide the country into civil war: was it moral for white people to own Black people as property?

In Missouri, the answer was yes, and it joined the Union only with assurance that white people could lawfully continue to own enslaved Black people in the territory. A few decades later, the United States Supreme Court told one of those enslaved men, a man named Dred Scott, that not only would he remain in slavery in Missouri, but also that he was not, and

never would be, a citizen of the United States. From the beginning, therefore, race was a critical part of Missouri's origin story, and racial bias in all its forms — segregation, discrimination, conflict, and violence — informed its future.

This report focuses on the death penalty — its past and present use. By studying who are targeted, prosecuted, and executed

in Missouri, both legally and illegally, clear patterns emerge. The data show that the race of defendants and the race of their victims has always played an outsize role in determining who will be sentenced to death in Missouri. There are also strong correlations suggesting that charging decisions, crime solving, and policing are also influenced by Missouri's historical treatment of Black people. The areas of concern identified in this report are deserving of careful study, and may be of particular interest to researchers, legislators, and advocates.

Early death penalty statutes identified specific crimes that were only punishable by death if committed by an enslaved person.

Historically, a person's race was the most important factor in determining whether they would be punished by death in Missouri. In 1804, the territory encompassing present-day Missouri adopted "The Law Respecting Slaves," which outlined a series of crimes punishable by death only if they were committed by an enslaved person. These crimes included slave conspiracy to rebel,

make insurrection, or murder; slave preparation, exhibition, or administration of any medicine; and stealing a slave. Black people and white people alike were eligible to receive death sentences for any of the following crimes: treason, murder, arson, and burglary or robbery where an innocent person died.¹ Then in 1820, white delegates in the territory attended the Missouri Constitutional Convention and drafted the first state constitution. Among the provisions they adopted was a death penalty statute that purported to eliminate these racial distinctions. Article III, Section 27 of the constitution read in part, "...a slave convicted of a capital offence shall suffer the same degree of punishment, and no other, that would be inflicted upon a free white person for a like offence..." The subsequent section dictated that "Any person who shall maliciously deprive of life or dismember a slave, shall suffer such punishment as would be inflicted for the like offence if it were committed on a free white person."² While this provision superficially eliminated racially specific death sentences, the reality was that race continued to play a critical role in determining who would live or die in Missouri, either at the hands of the state or by a murderous mob.

Despite race-neutral death penalty laws, enslaved people were four times more likely than whites to be executed.

Early death penalty statistics reveal that race-neutral capital punishment laws were not sufficient to remove the racial biases present in Missouri's justice system. The first recorded execution within the borders of present-day Missouri occurred in 1810. Throughout the rest of the 19th century, there were 175 executions across the state. Roughly a third of those executed were Black men and women; most of the remaining people executed were white men.³ For context, Black people—both enslaved and free—comprised a relatively small percentage of Missouri's population during the 19th century, ranging from 16% of the total population in 1820 to just 6% by 1890.⁴ Before the end of slavery in 1865, enslaved people were at least four times more likely to be executed than white Missourians.⁵

As a practical matter, entire classes of white people—white women and children—were essentially immune from capital punishment, while the same was not true for Black Missourians, whether enslaved or free.⁶ The youngest person sentenced to death in Missouri was a 10-year-old Black child referred to as Slave Mat.⁷ Mat was convicted based on an alleged confession that was extracted by white neighbors who interrogated him. He narrowly escaped execution by running away. At least three other enslaved children were not as fortunate.⁸

In 1838, an enslaved 12- to 14-year-old girl referred to as Slave Mary in court records became the youngest person put to death by the state of Missouri.⁹

The overrepresentation of Black people among those executed continued throughout the early- to mid-20th century and increased after enslaved people were freed. Although Black Missourians made up less than 10% of the total state population between 1900 and 1960¹⁰ they accounted for almost half of the 110 people executed by the state between 1900 and 1965.¹¹

Capital punishment was not the only law that was superficially race neutral but racially biased in application. In 1847, the Missouri General Assembly passed "An Act respecting slaves, free negroes, and mulattos," which prohibited the education of Black people, and made it illegal for free people of color in other states to immigrate to Missouri. The restriction on the immigration of free people contradicted the second Missouri Compromise, which stipulated that the Missouri constitution should "never be construed to authorize the passage of any law" that impaired the privileges and immunities of U.S. citizens; this stipulation existed because Missouri's first proposed constitution included similar language about prohibiting free Black migration to the state.¹² A decade later, the U.S. Supreme Court ruled in *Dred Scott v. Sandford* (1857)—a case brought by an enslaved person from Missouri—that Black people could never be American citizens.¹³



Burning of McIntosh at St. Louis, in April, 1836.

Drawing of the burning of Francis McIntosh, from *Illustrations of the American Anti-slavery Almanac for 1840*

The first recorded lynching in U.S. history occurred in Missouri, and lynchings continued to terrorize Black communities for more than a century.

Within an hour of arriving in St. Louis in 1836, a free Black man named Francis McIntosh was tackled by plain clothes police officers and dragged by white onlookers to a tree where he would ultimately be chained and burned alive. The grisly nature of McIntosh's murder garnered nationwide attention. Abraham

Lincoln evoked the lynching in a speech, saying "His story is very short, and is perhaps the most tragic of anything of the length that has ever been witnessed in real life."¹⁴ By the late 1800s, racial terror lynchings had increased in regularity, particularly in Southern, former slave-holding states.

Throughout the 19th and 20th centuries, at least 60 Black Missourians were killed in lynchings, making it the state with the second highest number of racial terror lynchings outside of the South.¹⁵ There were at least 101 total documented lynchings in the state. White people were also victims of mob violence in the 19th century, but there was a marked shift in the early 1900s when the practice became almost exclusively reserved for Black people.¹⁶ This change was likely explained by the dramatic increase in the state's Black population as Black people fled the violence of the South.¹⁷

During this era of racial terror, Black people were lynched based on flimsy evidence and were especially targeted when the alleged victim was white. In April 1906, for example, Horace Duncan and Fred Coker, two innocent Black men, were abducted from the county jail in Springfield, Missouri and lynched by a white mob of several thousand participants. Duncan and Coker were arrested after a white woman reported being assaulted by two Black men. There was no evidence that Duncan and Coker were involved in the crime, and their employer also provided an alibi confirming that they could not have been involved in the alleged assault. Nevertheless, as one newspaper reported, the mob "was bent on vengeance and in no mood to discriminate between guilt and innocence." After watching Duncan and Coker's bodies burn to ash, the mob continued their rampage and abducted another Black man from the

jail. Will Allen became the third and final victim of this Easter Sunday lynch mob. Two days later, the woman who reported the assault issued a statement saying she was "positive" that Coker and Duncan were not her assailants, but it was too late. No one was convicted following the lynching.¹⁸

Missouri was also the site of the first lynching to result in a Department of Justice civil rights investigation. Cleo Wright, a 30-year-old Black man, was accused of assaulting a white woman in January 1942. After his arrest, Wright was shot four times by one officer, and beaten on the skull with a revolver by another officer until he fell out of the police car. The hospital refused to admit Wright for treatment because of his race.¹⁹ By 9 AM the following day, a crowd of 500 people had gathered and his virtually unconscious body was dragged into the Black residential district—which was likely an intentional choice to further terrorize the Black community. Wright's body was then set on fire by the mob. Though federal bodies investigated the lynching, no one was indicted or convicted in the murder.²⁰ Many people who were at the lynching are still living today, according to Sikeston natives, where the lynching occurred.²¹

Black people were also terrorized with *threats* of lynchings. In 1855, an 18-year-old pregnant, enslaved girl named Celia was accused of killing her owner after he attempted to rape her. The morning after the murder, a white neighbor forced

a confession from her, later saying he had a rope “provided for her if she did not tell.” This confession was then used to secure a death sentence for her.²² Mob violence was likely an omnipresent threat in all capital trials in the late 19th to early 20th centuries.²³ The Missouri Supreme Court was aware of the pervasive lynching threats in capital cases at the time and overturned a man’s conviction in 1898 because the prosecutor had warned the jury that “Escape of criminals at the hands of juries brings on lynch law.” But the following year, the court denied a request for a change of venue, ruling that “some talk of mobbing [the defendant] and the sheriff removing

him to another county for safe-keeping is not sufficient ground.”²⁴

Importantly, the decline in lynchings across the country coincided with a push to replace the practice with legal executions. As the Equal Justice Initiative wrote in their 2017 report on lynchings in America, “The decline of lynching relied heavily on the increased use of capital punishment imposed by court order following an often accelerated trial. That the death penalty’s roots are sunk deep in the legacy of lynching is evidenced by the fact that public executions to mollify the mob continued after the practice was legally banned.”²⁵

There were many similarities between lynchings and early executions. The public nature of executions was one such link between the two practices, and Missouri retained public executions longer than all but one other state.²⁶ In the late 1800s, multiple public executions attracted crowds of more than 20,000 people. The crowds were fewer in the 1900s, but executions were still very well attended up until the last public execution in 1937.²⁷

The sheriffs who carried out these legal executions also handed out souvenirs to the crowd, a practice common after lynchings. Sheriffs would cut down the ropes used to hang people and provide pieces to excited onlookers. After a quadruple execution in St. Louis, a drug store owner was permitted to keep a severed head of a Black person who was executed and display it in his shop.²⁸ Publicly killing Black people—and the constant reminders of these executions via the display of souvenirs and burned hanging trees—was just one way used by white people to threaten and intimidate Black people.

FOR SAINT LOUIS!

The Regular Steam Packet
EAGLE!

THE undersigned, having chartered the above Steam-boat, for the purpose of accommodating all the citizens of ALTON, and the vicinity, who may wish to see the

Four Negroes Executed,

At St. Louis, on **FRIDAY NEXT**, would inform the public that the Boat will leave this place at **SEVEN** o'clock, A. M., and St. Louis at about **FOUR**, P. M., so as to reach home the same evening.
The Boat will be repaired and fitted up for the occasion; and every attention will be paid to the comfort of Passengers.

FARE FOR THE TRIP TO ST. LOUIS & BACK
ONLY \$1 50!!!

The Negroes are to be hung on the point of *Duncan's Island*, just below St. Louis. The Boat will drop alongside, so that **ALL CAN SEE WITHOUT DIFFICULTY.**

For Passage, apply to
W. A. Wentworth,
P. M. Pinckard.

ALTON, JULY 7, 1841

A Violent Racial History

Lynchings were not the only form of mob violence Black Missourians encountered. On many occasions, spanning a century, white citizens used violence to intimidate and/or expel Black people from their communities. Many of these events would become important to national movements toward racial equality.

The East St. Louis Race Massacre of 1917

The racial violence in East St. Louis, Illinois on July 2, 1917, would mark the first of many concerted efforts to remove Black people from midwestern cities during and after the First World War.²⁹ The fear that they were being replaced by Black transplants looking for jobs led white people in East St. Louis to plan an attack against the Black community. The mob systematically removed Black people from their homes with the intent to kill; while one group set fire to Black houses from the alleys, another group waited in the front of the house to shoot families as they fled their burning homes.³⁰ Other Black people were hanged, burned alive, shot, or beaten to death. Police either stood by or participated in the violence.³¹ Official accounts record that 39 Black people died, though other estimates range as high as 200.³² More than 300 homes and businesses were burned. More than half of East St. Louis' Black population, totaling 6,000 men, women, and children, fled the city. Many walked across the bridges to St. Louis with just the belongings they could carry.³³

“ For an hour and a half last evening I saw the massacre of helpless Negroes at Broadway and Fourth street, in downtown East St Louis, where a black skin was a death warrant. ”

The Fairground Park Riot of 1949

On June 21, 1949, around 30 Black children and hundreds of whites arrived at the Fairground Park Pool. It was the first day Black children were allowed entry into the previously white-only St. Louis municipal swimming pool.³⁴ After an hour of swimming, the Black children were sequestered in a locker room and searched for weapons before being escorted through an angry mob of white people throwing bricks. Officers brought some of



Underwood & Underwood, Copyright Claimant. Silent protest parade in New York City against the East St. Louis riots. New York, ca. 1917. Photograph. <https://www.loc.gov/item/95517074/>.



God, we were worse than some of the people who we were trying to arrest. ””

Clarence Gibson, retired Kansas City Police Department officer⁴⁰

the young boys to the edge of the park and told them, “Run, you’re on your own.”³⁵ Over the rest of the afternoon and evening, the white crowd swelled to 5,000 people, many roaming the streets with bats, clubs, and knives, seeking to attack Black people in the area. By the end of the night, 15 Black people had been seriously wounded, including two who were stabbed. The pool was subsequently closed for the summer. It reopened in 1951 as an integrated pool only after a federal court order. This court order was eventually used as a precedent in the U.S. Supreme Court’s *Brown v. Board of Education* (1954) decision to desegregate schools. The pool was ultimately closed in 1954 because white people stopped using it, choosing to use private swimming pools instead.³⁶

The Kansas City Race Riot of 1968

Kansas City, Missouri was one of over a hundred cities nationwide that erupted into protest following the assassination of Dr. Martin Luther King, Jr., on April 4, 1968.³⁷ What started as a student-led school walkout on the day of Dr. King’s funeral (April 9), eventually became a larger skirmish between Black residents and the Kansas City Police Department that lasted for two days. Agitated by police using mace and tear gas on a relatively non-violent crowd, the protest became more destructive and eventually turned violent. In a report commissioned by the mayor afterwards, Black people expressed concerns that “some members of the Police Department took advantage of these days of unrest to vent their feelings against black people.”³⁸ Some of the allegations made against the police included reports they had beaten and kicked a pregnant woman, used tear gas on young children, and split a child’s head open by beating him with a gun. By the end, six people were killed, 18 were wounded by police, an additional 18 were wounded or injured by unknown people, 312 buildings were damaged, and 1,042 people were arrested.³⁹



The Ferguson Protests of 2014

Michael Brown, an 18-year-old unarmed Black man, was shot and killed by a white police officer in Ferguson, Missouri on August 9, 2014. Mr. Brown's death was the catalyst for a series of protests and prolonged civil unrest. Deep-seated tensions between the police and the Black community contributed to the community's considerable response.⁴¹ The Ferguson Commission—created in part to investigate the root causes of the unrest—noted that they “heard from many Black citizens in the St. Louis region who do not feel heard or respected when they interact with police or the courts, [and] do not feel that they are treated in an unbiased way.”⁴²

The police responded to the protests with an overwhelming show of force, including use of sniper rifles, flash grenades, armored vehicles, tear gas, and more. Over 200 people were arrested in the 17 days after Mr. Brown's death.⁴³ The Department of Justice's Office of Community Oriented Policing reported that this response “inflamed tensions and created fear among demonstrators.”⁴⁴ In a report released in the weeks after Mr. Brown's death, the ACLU wrote that the “[m]ilitarization of policing encourages officers to adopt a ‘warrior’ mentality and think of the people they are supposed to serve as enemies.”⁴⁵

The legacy of racial violence and discrimination continues to affect the use of capital punishment in Missouri.

While the movement to replace lynchings with legal executions took hold decades ago, the racial underpinnings informing this shift continue to inform Missouri's modern capital punishment system.

A recent study of death sentences imposed from 1989 through 2017 found a strong statistical relationship between the level of racial resentment in a state and the number of death sentences for Black defendants. Researchers from the University of North Carolina at Chapel Hill investigating the correlation of racial resentment, lynchings, and death sentences stated:

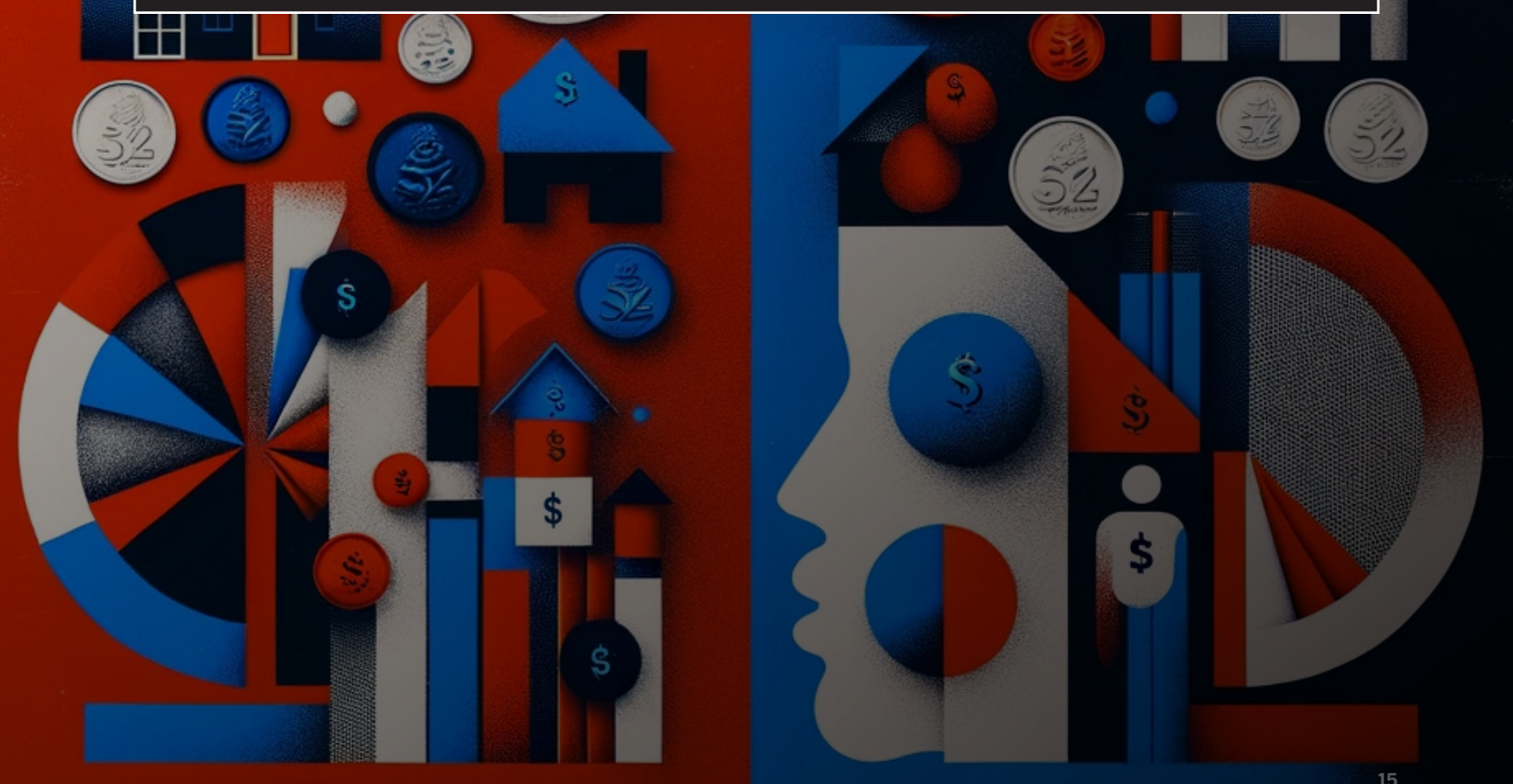
Our results suggest that the historical legacies of lynchings carry indirect effects for death sentencing through [two] pathways. On the one hand, lynchings indirectly increase death sentences as a function of contemporary racial resentment, consistent with a racial antipathy interpretation. On the other hand, there is also an indirect effect of historical lynchings through contemporary conservative ideologies reflective of antigovernment intervention, consistent with the vigilantism hypothesis.⁴⁶

There have been 216 death sentences in Missouri since 1972, and 40% have been for Black defendants.⁴⁷ The state has also executed 97 people since 1976, 38% of whom were Black men.⁴⁸ Black people comprise just under 12% of the total state population.⁴⁹

The historical legacies of lynchings carry indirect effects for death sentencing...



In 2022, 67% of people arrested for homicides in Missouri were Black.⁵⁰ On its face, the comparatively high percentage of Black people who have been sentenced to death may seem fair given that two-thirds of homicide offenders have been Black. However, it does raise questions as to why Black people—who are, again, under 12% of the total state population—are so overrepresented among those arrested for homicide. Experts at the World Bank have long contended that violent crime is correlated with various measures of inequality, including income and wealth.⁵¹ The connection between violent crime and inequality may help explain the high proportion of Blacks charged with homicides in Missouri: The poverty rate of Black people in the state is more than double that of whites (19.3% vs. 8.3%, respectively). Relatedly, the Federal Reserve Bank of St. Louis reported that “Black Missourian households earned 62 cents per dollar of white Missourian income at the median.”⁵²

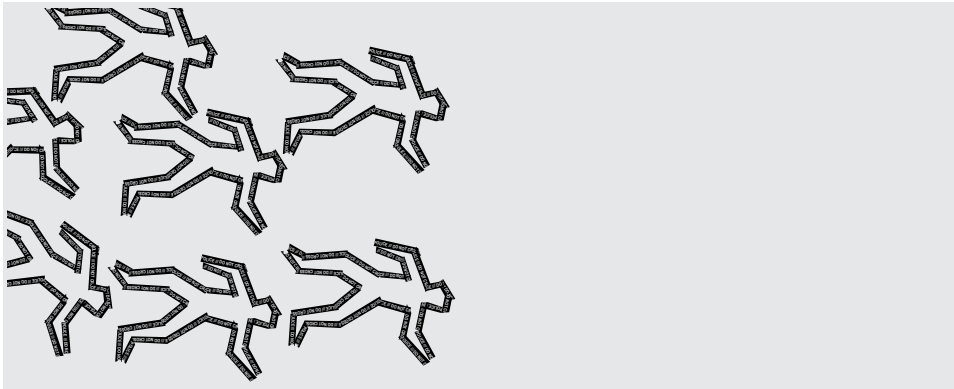


Persons Sentenced to Death for
White-Black Interracial Murders in
Missouri

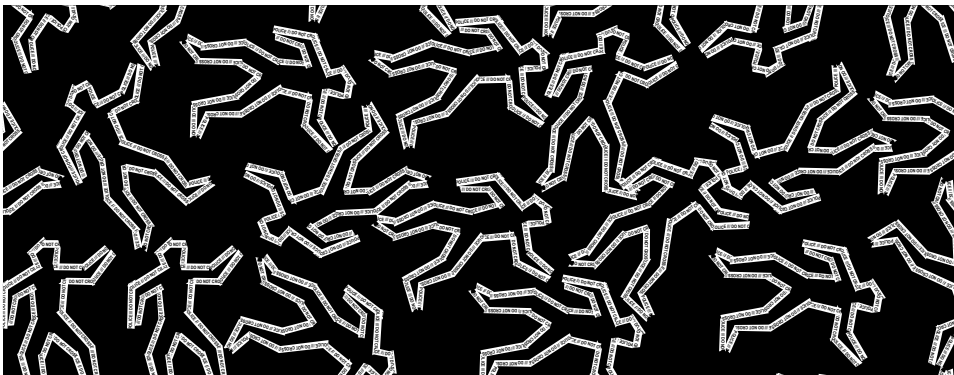


This graphic does not include death sentences for offenses involving victims of multiple races.

White Defendant/Black Victim (7)



Black Defendant/White Victim (52)



WARD NEGRO LYNCHED; TROOPS IN SPRINGFIELD

Men Killed by Missouri Mob Were Probably Innocent.

Capital cases with white victims are seven times more likely to result in an execution than those with Black victims.

One of the most clear and persistent racial disparities in death sentencing concerns the overrepresentation of white victims among cases resulting in death sentences. Nationwide, Black people are more likely to be victims of homicide than white people.⁵³

Yet, in the modern era of the death penalty, 78% of cases in which people were executed in the U.S. involved white victims.⁵⁴ The bias for white victims holds true in Missouri. Homicides involving white victims are seven times more likely to result in an execution than those with Black victims; further, when a case involves a white female victim, defendants are nearly 14 times more likely to be executed than cases involving Black male victims.⁵⁵ This is especially notable since Black males constitute the majority of all homicide victims statewide.⁵⁶ Of all death sentences imposed in Missouri since 1972, 80% have involved white victims. For comparison, white victims made up 36% of all Missouri homicide victims from 1976–1999.⁵⁷ Meanwhile, 2020 homicide data revealed that, for the seventh year in a row, Missouri had the highest Black homicide victimization rate in the country.⁵⁸ The disparate use of capital punishment for white victims—particularly white female victims—is reminiscent of historical death sentences and

And Then They Sang A Sabbath Song

By Katherine Lederer

When Horace Duncan and Fred Coker walked home from work late Friday night—Good Friday, April 13, 1906—they could not know it was for the last time. They had been selected as the victims of the most barbaric series of events Springfieldians have ever witnessed—or participated in.

On any weekend, the public square, the business center though not the geographic center of Springfield, was crowded with shoppers, with pedestrians dodging carriages and wagons and with electric streetcars passing through the center of the square and swerving around the Gottfried Tower, a metal structure decorated with electric bulbs and arc lamps and crowned with a replica of the Statue of Liberty outlined by colored lights.

A time traveler watching the crowds gathered on soft spring nights to hear the music of bands seated on the wooden bandstand 12 feet up the tower might think of *The Music Man* or Judy Garland's *Meet Me in St. Louis*.

But on that April Sunday, the Easter sunrise shone on the still warm ashes of young Black men on a square utterly and permanently changed, though no memorial stands to tell the story.

Horace B. Duncan, just turned 20 on March 15, the only son of Will and Mary Adams Duncan, lived with his parents, Minnie, his cousin, and Corde, his sister, at 836 Weaver in Westport, an almost rural Black settlement.

A few blocks north on Nichols, just west of the Frisco tracks, the orphaned Fred Coker, 21, lived with his Grandfather King Coker, listed by the local newspaper in 1890 as one of the leaders in the Black community. A relative of Horace Duncan's, H.S. Duncan, was a minister. Horace, short, dark and muscular, resembled him.

Horace Duncan and Fred Coker grew up together, played together, went to school together and got jobs at Pickwick Livery and Transfer Company together. There were no eight-hour days in 1906 and on that Friday night in April, the two young men worked until 10 p.m. loading stage sets for a new production at the Baldwin

Theatre on St. Louis Street. Their White employer and vice president of the company, Tom Morrow, told the police just that on Saturday morning, but it made no difference.

While Duncan and Coker were at work in the 200 block of East Pickwick Street (now McDaniel) south of the square, Mina Edwards (or Mable Edmondson as she called herself at first to reporters) and her lately met escort, Charles Cooper, a 22-year-old Elwood farmer, were making an evening of it at a sporting house in the northwest part of the city.

That was not the account of their evening reported in the Saturday papers. According to published accounts, "Mable Edmondson" had driven into town in a buggy from her farm home near Fair Play to take a job as a domestic at the St. James Hotel and met "old friend" Cooper, who had offered to drive her to her new job. Three different employers were named in the next few days as her story and point of origin changed.

It developed that she had run away from her farmer husband, had been around Springfield for a month, had gone to Monett the week before to work at the Harvey House, had decided "the work was too hard," had taken the train back to Springfield and had met Cooper somewhere Friday night.

Mina Edwards left Springfield before she could be subpoenaed by the grand jury, as did her companion of the evening, Charles Cooper, but Rose Cameron, White proprietress of the sporting house, testified as to their whereabouts on the evening of Friday the 13th.

According to the Saturday morning paper, however, Charles Cooper had approached policemen E.T.W. Trantam and John Wimberly (Trantam was later indicted, along with Wimberly's brother William "Toke" Wimberly) and told them that, while driving Edwards to her new position, he and the woman had been attacked at Phelps and Main by two masked Negroes.

The Negroes, he said, dragged Mina Edwards into Weaver's measure-

west of Franklin and raped her. Returning to the spot, Cooper and officers allegedly met "a white object trudging up the railroad tracks" dragging a suitcase. Officer Wimberly took the woman to his house, where she fell asleep in 30 minutes.

Police arrested Horace Duncan Saturday morning. How was he singled out? Supposedly, Charles Cooper rode around looking for the attackers and, though the attackers had been masked and the night dark, he recognized



Horace Duncan.

Duncan was taken to the holdover at the city jail, where the calaboose still stands. His mother followed her son and the officers all the way to the jail, begging them not to hurt her boy. When they assured her that he would be well treated, she left. When Tom Morrow went to the police station and told officers that Duncan had been across town at work until at least an hour after the alleged attack had occurred, they released Duncan.

Arresting Fred Coker because he and Duncan "had been together," officials "sweated" him for some time while he maintained his innocence. Then showed

EDWARDS

Wrecked
amaged
Dio.

imes.

lynchings in Missouri. Just as Fred Coker and Horace Duncan found themselves lynched within hours after being falsely accused of harming a white woman, defendants accused of harming white women under Missouri's current death penalty scheme are disproportionately more likely to find themselves on the receiving end of lethal punishment. The race-of-victim effect is disproportionately borne by Black defendants, but the preferential prioritization of white victims impacts white defendants, too, as most homicides occur within the same racial group.

Prosecutors wield significant power over decisions in death penalty cases, and studies suggest racial bias continues to influence them.

Prosecutors are less than half as likely to file capital charges in cases with Black victims compared to cases with white victims.

Missouri law gives prosecutors broad discretion in charging homicide cases, and multiple statistical analyses suggest this discretion has contributed to the racial disparities found in capital sentencing. One study of intentional Missouri homicide cases from 1997–2001 found that prosecutors were less than half as likely to file a capital charge in cases that involve Black victims compared to cases involving white victims.⁵⁹

Another study similarly determined that Black defendants who killed white victims were five times more likely to be charged with murder than Black defendants in intraracial cases. The authors concluded that “this pattern confirmed the suspicion that whiteness is valued over non-whiteness, and correctly predicted that the severest punishment would be visited in cases in which a nonwhite offender killed whites.”⁶⁰

A closer look at outlier jurisdictions:
St. Louis County and St. Louis city

St. Louis County and St. Louis city are Missouri’s two main outlier jurisdictions. Of all U.S. counties, these two jurisdictions rank among the top 10 in terms of the number of people who have been executed.⁶¹ Just one county outside of Texas—Oklahoma County, Oklahoma, a major death penalty outlier⁶²—is responsible for more executions than St. Louis County and St. Louis city, which rank second and third, respectively, when Texas counties are removed from consideration.⁶³

The racial biases at the local level are a microcosm of the issues identified in state level analyses. A statistical review of homicides and capital prosecutions in St. Louis County, for example, found that at every stage of the criminal legal process—from the occurrence of a death-eligible crime to a death sentence being imposed—the percentage of cases involving white victims steadily increased. While just 31.6% of death-eligible crimes involved white victims, by the final stage where a death



sentence was imposed, 62% of the cases involved white victims. The researcher noted that “the first two stages of the process, charging first-degree and issuing a notice of intent to seek death, which are under unilateral control of the prosecuting attorney, show the greatest movement toward white-victim cases.”⁶⁴ Further analysis revealed that a white victim essentially acts as an “aggravating factor, with an influence on capital sentencing comparable to the defendant’s status of having a prior conviction of first-degree murder or felonious assault.”⁶⁵

One-third of all active death sentences came out of St. Louis County during Former Prosecuting Attorney Bob McCulloch’s tenure from 1991 to 2018. He sought and secured death sentences for 23 people while in office. At least eight capital cases from his office were overturned or commuted by higher courts. After winning reelection by large margins, often unopposed, for seven terms, McCulloch was unexpectedly ousted in favor of progressive Prosecuting Attorney Wesley Bell, who promised to never seek the death penalty.⁶⁶



From 1991 to 2018 Bob McCulloch sought and secured death sentences for 23 people while in office.



There are countless pools of blood that have been crying out from the ground all over America and especially in Missouri, from particularly innocent Black men who are so easily convicted and so easily sentenced to death.

Cassandra Gould, Jefferson City pastor
2018 press conference in support of
Marcellus Williams





Marcellus Williams

On August 11, 1998, Felicia “Lisha” Gayle was found dead in her gated St. Louis home by her husband, Dr. Daniel Picus. She had been stabbed 43 times, and several expensive items were missing from the home. The couple were white, wealthy, and well-known in the community—Lisha had been a reporter for the St. Louis Post-Dispatch before becoming a full-time volunteer social worker. But the case remained unsolved for nearly a year as police made no arrests. Dr. Picus offered a \$10,000 reward for information, and thereafter police heard from two informants who gave them a name: Marcellus Williams.

As the trial began, prosecutors struck six out of seven Black jurors in the pool. The final composition was 11 white jurors and one Black juror despite St. Louis’ population being over 50% Black. Forced to explain why they struck one of the Black jurors, prosecutors argued that he was wearing similar clothes to Mr. Williams and worked at the post office, and told the judge they believed that meant he was liberal and opposed to the death penalty. Defense counsel pointed out that a white postal worker wasn’t struck, multiple white jurors wore similar clothes to Mr. Williams, and the juror had said he could vote for death. The judge upheld the prosecutor’s strike. The State’s case rested almost entirely on the two informants, Mr. Williams’ former cellmate Henry Cole and his ex-girlfriend Laura Asaro. But both had histories of informing the police in exchange for payments or dropped charges, and their own families considered them untrustworthy. Mr. Cole had once “served as an informant against his own son...to get a deal from authorities,” and later testified that he would not have participated in Mr. Williams’ case if not for the reward. Ms. Asaro had previously lied under oath, and witnesses later said she admitted setting Mr. Williams up in order to get the money. The State turned over criminal records for the two witnesses just two days before trial and never disclosed other damaging

records. And the forensic evidence pointed elsewhere. Bloody footprints at the crime scene were the wrong size, hair fibers didn't seem to match, and police lost the fingerprints. Nonetheless, Mr. Williams was convicted in 2001 and sentenced to death.

In January 2015, the Missouri Supreme Court stayed Mr. Williams' execution to allow for further DNA testing. In 2016, the testing revealed that male DNA had been found on the bloody knife from the crime scene—and excluded Mr. Williams as a contributor. Three DNA experts have confirmed the findings. However, the Missouri Supreme Court voted for Mr. Williams' execution to proceed anyway, and he came within five hours of execution in 2017 before then-Governor Eric Greitens imposed a stay by executive order.

Gov. Greitens invoked a 1963 state law authorizing a board of inquiry to investigate innocence claims to prevent wrongful executions. Under the law, executions would be stayed until the board issued a report and recommendation. However, Gov. Greitens resigned less than a year later, and Governor Mike Parson dissolved the board on June 30, 2023 without any findings in the case issued. His administration is seeking a new execution date. Mr. Williams sued on August 23, alleging that Gov. Parson's conduct violated the 1963 law because no report or recommendation had been issued.

Death-sentenced Black men are overrepresented among cases that were reversed or resulted in exonerations due to official misconduct.

The Death Penalty Information Center has identified 21 capital convictions in Missouri that have been reversed for prosecutorial misconduct.⁶⁷ While 40% of death sentences have been given to Black defendants,⁶⁸ 62% of misconduct reversals or exonerations have been for Black defendants.⁶⁹ This is in line with other studies and national trends regarding race and prosecutorial misconduct in wrongful capital convictions. The National Registry of Exonerations' 2022 report on race and wrongful convictions notes that, among capital exonerations, prosecutorial misconduct was a cause in 65% of cases with Black defendants.⁷⁰

Three of the four people who have been exonerated from Missouri's death row are Black men. All three of their cases were marred by official misconduct, with prosecutors withholding favorable evidence and/or relying on false evidence, or police coercing witnesses with incentives.⁷¹ Two of the men, Reginald Griffin and Joseph Amrine, were implicated by incarcerated people who were asked by law enforcement to testify against the defendant in exchange for help with unrelated criminal cases and favorable letters to present to parole boards. One of the witnesses that the police convinced to falsely

testify against Mr. Amrine had to be questioned 30 times by the lead investigator to be able to tell the "right" story.⁷²

Investigations of the Missouri Attorney General's office suggest there is a culture of fighting against potential wrongful convictions, even when people have been proven innocent. An article written by Injustice Watch, in partnership with The Appeal, wrote:

*The attorney general's office has opposed calls for relief in nearly every wrongful conviction case that came before it and has been vacated since 2000, according to an Injustice Watch review of court records and a national database of exonerations. That includes 27 cases in which the office fought to uphold convictions for prisoners who were eventually exonerated. In roughly half of those cases, the office continued arguing that the original guilty verdict should stand even after a judge vacated the conviction.*⁷³

The determination to secure a death sentence at any cost reflects the mindset of many Americans in the early 20th century: as lynchings became increasingly "disfavored because of the 'bad press' they garnered... legislatures shifted to capital punishment so that legal and ostensibly unbiased court proceedings could serve the same purpose."⁷⁴



JUSTICE
**LAURA
DENVIR
STITH**

Are you suggesting, ...
even if we find Mr. Amrine
is actually innocent,
he should be executed?

MISSOURI ASSISTANT
ATTORNEY GENERAL
FRANK JUNG

That's correct,
your honor.⁷⁵

Continuing racial biases in policing affect homicide clearance rates and police interaction with Black communities.

In homicide cases, the race of the victim also appears to affect whether the crime is ever solved. A national review of unsolved murder cases in 2020 found that cases involving white victims were 50% more likely to be solved than cases with Black victims.⁷⁶ Unsolved murder statistics from Missouri similarly reveal severe racial disparities regarding which homicide cases are solved: from 2013–2021, 48% of homicides of Black victims went unsolved, compared to 14% of homicides of white victims.⁷⁷ The fact that cases with white victims are solved at a higher rate contributes to the overrepresentation of white victims among those sentenced to death. Racial biases affect policing in many ways. For example, Black people are more likely to be on the receiving end of police violence, and police officers are more likely to engage in misconduct when a

defendant is Black.⁷⁸ Statistics show that Black Missourians are disproportionately killed by police. While 11% of the population is Black, 36% of people killed by police in Missouri from 2013–2021 have been Black. Black Missourians are five times as likely to be killed by police as white people in the state.⁷⁹

Counties that disproportionately use the death penalty also more frequently use deadly police force.⁸⁰ In St. Louis city, for example, 84% of people killed by the St. Louis City Police Department from 2013–2021 were Black, though less than half of the population in St. Louis city is Black. The department has more racial disparities in its use of deadly force than 87% of other police departments in the state.⁸¹ St. Louis County has similar racial disparities in lethal force. Over half of the people killed by the St. Louis County Police Department from 2013–2021 were Black, despite Black people making up less than a quarter of the county's population.⁸²





Officers who kill civilians are rarely charged, let alone convicted. In 2021, Kansas City Police Department detective Eric DeValkenaere became the first KCPD officer to be convicted in the death of a Black man, 26-year-old Cameron Lamb. The judge who sentenced DeValkenaere to six years in prison for manslaughter allowed him to remain free on bond while he appeals his conviction—an “extremely rare” outcome, according to Jackson County attorneys. While Jackson County prosecutors have defended his conviction, Missouri Attorney General Andrew Bailey, arguing on behalf of the state, asked for DeValkenaere’s conviction to be overturned. In October 2023, the Missouri Court of Appeals upheld DeValkenaere’s conviction and ruled that he will have to serve his six-year sentence.⁸³

By contrast, Black civilians who kill white police officers are more likely to be charged and capitally prosecuted. Kevin Johnson was tried capitally twice in St. Louis County for killing a

police officer in 2005. A special prosecutor reviewed Johnson’s case in 2021 and found that “unconstitutional racial discrimination infected [his] prosecution.” Among other evidence of racial discrimination, the special prosecutor found racial differences in charging decisions for cases involving officer killings. Bob McCulloch, the St. Louis County prosecutor responsible for a third of Missouri’s active death sentences, prosecuted five police officer killings during his tenure. McCulloch sought the death penalty in the four cases with Black defendants. In the one case involving a white defendant, McCulloch sought life, even though the defendant had bragged on social media about wanting to kill cops. Further, the white defendant’s attorneys were given almost a year to collect mitigating evidence, while the Black defendants were not given the same opportunities.⁸⁴

In 2014, after a white police officer shot and killed 18-year-old Michael Brown, a Black teenager,

in Ferguson, Missouri, concerns about excessive police force targeted at Black people became national news. Mr. Brown's murder also prompted weeks of protests against police brutality in Ferguson, to which police responded with further violence. In the aftermath of Mr. Brown's killing and the subsequent protests, the United States Department of Justice (DOJ) Civil Rights Division launched a civil rights investigation of the Ferguson Police Department and the city's municipal court system.

The DOJ found extreme racial disparities in arrest and citation rates and police violence:

Black people accounted for 85% of vehicle stops, 90% of citations, and 93% of arrests; Black residents were subject to nearly 90% of documented force and 100% of canine bite incidents for which race was available; and Black people were substantially more likely to be issued four or more citations in a single instance than non-Black people. The DOJ investigation concluded that "Ferguson's approach to law enforcement both reflects and reinforces racial bias, including stereotyping. The harms of Ferguson's police and court practices are borne disproportionately by African Americans, and there is evidence that this is due in part to intentional discrimination on the basis of race."⁸⁵

“ Our investigation indicates that this disproportionate burden on African Americans cannot be explained by any difference in the rate at which people of different races violate the law. Rather, our investigation has revealed that these disparities occur, at least in part, because of unlawful bias against and stereotypes about African Americans. We have found substantial evidence of racial bias among police and court staff in Ferguson.⁸⁶ ”



Capital sentencing continues to be dominated by all-white or nearly all-white juries.

Before 1986, Black capital defendants had no enforceable legal right to protest the exclusion of people of color from their juries at trial.⁸⁷ As a consequence, all-white, male juries were the norm. But even subsequent to the decision in *Batson v. Kentucky*, many Black men charged with the death penalty in Missouri had their fate determined by all-white or nearly all-white juries because prosecutors continued the longstanding practice of deliberately excluding potential jurors of color. Former St. Louis County Prosecuting Attorney Bob McCulloch, for example, routinely removed any potential jurors who worked for the United States Postal Service because, he said, they were “very disgruntled, unhappy people.” An affidavit from a former prosecutor in the office later revealed that the so-called “Postman Gambit” was regularly used as a pretext to eliminate Black jurors—as was seen in Marcellus Williams’ case earlier—since the majority of postal workers in the county were Black.⁸⁸

Studies have shown that non-diverse juries affect trial and sentencing outcomes. Researchers who studied mock juries found that all-white juries are more likely to convict than racially diverse juries; when compared to actual jurors’ sentencing patterns in capital cases, this pattern holds true.⁸⁹ More specifically, studies have determined all-white juries are more likely to sentence Black defendants to death.⁹⁰ Diverse juries also have been found to more thoroughly consider the evidence and be more willing to address issues of race instead of ignoring them.⁹¹

Kevin Strickland, a Black man who has since been proven innocent, was tried capitally twice in Missouri. The jury in his first trial deadlocked at 11-1 for conviction, with the only Black juror holding out for acquittal. The prosecutor later said that he had been “careless” in seating a Black juror and that this “mistake” would not happen again.⁹² Strickland was subsequently tried and convicted by an all-white jury after the prosecutor struck the only four potential Black jurors from the panel.



A
PLACE

A PLACE WHERE YOU CANNOT SEE THE
STARS IN THE SKY AT NIGHT.

WHERE MOST OF THE TIME THE CLOUDS
BLOCK THE SUN.

IT'S ONE OF THE REASONS WHY THOSE
IN SOLITARY CONFINEMENT ARE
VITAMIN D DEFICIENT.

WHEREIN TALKING TO OURSELVES WE
HAVE BECOME PROFICIENT.

WHERE THOSE WITH NO HOPE ARE SAD;
YET FOR THE OPTIMISTIC, MOMENTS
OF HAPPINESS CAN BE HAD.

WHERE THOSE WITH BASE AND ALT-RIGHT
SPIRITS TRY TO DROWN OUR HOPE.

WHERE THOSE WITH FAITH SWIM AND FIGHT
TO STAY AFLOAT!

THAT PLACE IS...TERRE HAUTE'S SPECIAL CONFINEMENT UNIT



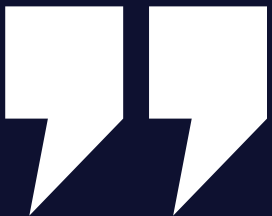
BY,
NORRIS G. HOLDER
#26902044 (SCU)
P.O. BOX 33
TERRE HAUTE, IN 47808
2/6/23



You get somebody growing up in a society completely separated from us, *unfortunately—and this is not to inject a racial issue, but unfortunately it is primarily Black—and guns, drugs, gangs are a way of life.*

Charlie Shaw

Norris Holder's defense attorney



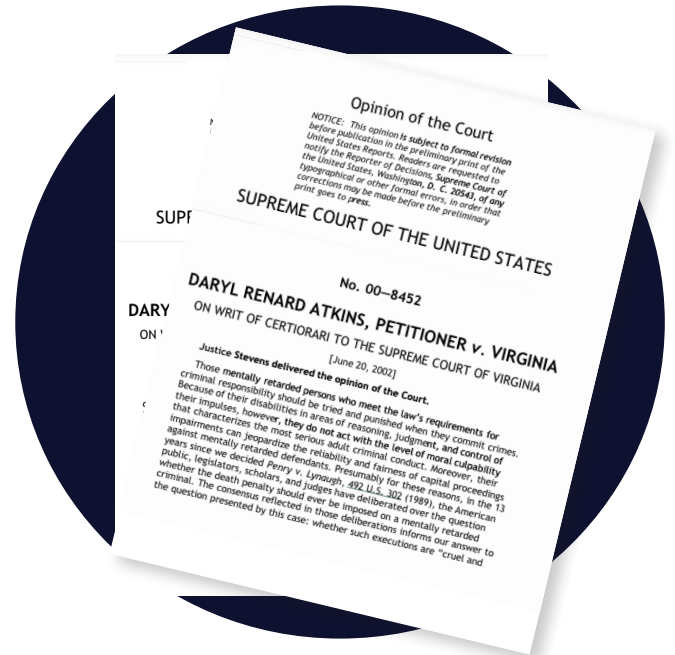
Norris Holder

Norris Holder was convicted and sentenced to death in 1998 by an all-white federal jury for the killing of a white security guard in the course of a bank robbery. Not only did Mr. Holder's lead defense lawyer, Charlie Shaw, fail to object to the prosecutor's peremptory strikes against all jurors of color, but Mr. Shaw himself disparaged his client using racially offensive language and stereotypes. For example, Mr. Shaw told the all-white suburban jury that while they had a "grandfather or a father" to teach them gun safety, Mr. Holder learned about guns "from the drug dealers and the bums and the hoodlums who terrorize and are predators" in the "ghettos" where Mr. Holder was raised. Mr. Shaw consistently referred to his own client as "this boy" rather than using his name, and told the jurors that "none of us were brought up in one of these ghettos...crime is rampant, and all of the things that we consider values do not exist." Mr. Holder's death sentence followed a pattern of racial disparities noted in the federal prosecution of bank robbery cases. Out of 93 death-eligible cases, the Department of Justice sought the death penalty in 27 of them; 23 of those defendants (85%) were Black. Only one was white. The racial disparity remained when accounting for the total number of defendants of each race: the Attorney General authorized the death penalty in 40% of bank robbery cases with Black defendants, compared to 9% of cases with Hispanic defendants and 8% of cases with white defendants. All 8 defendants ultimately sentenced to death were persons of color, and 7 were Black. All had white victims.

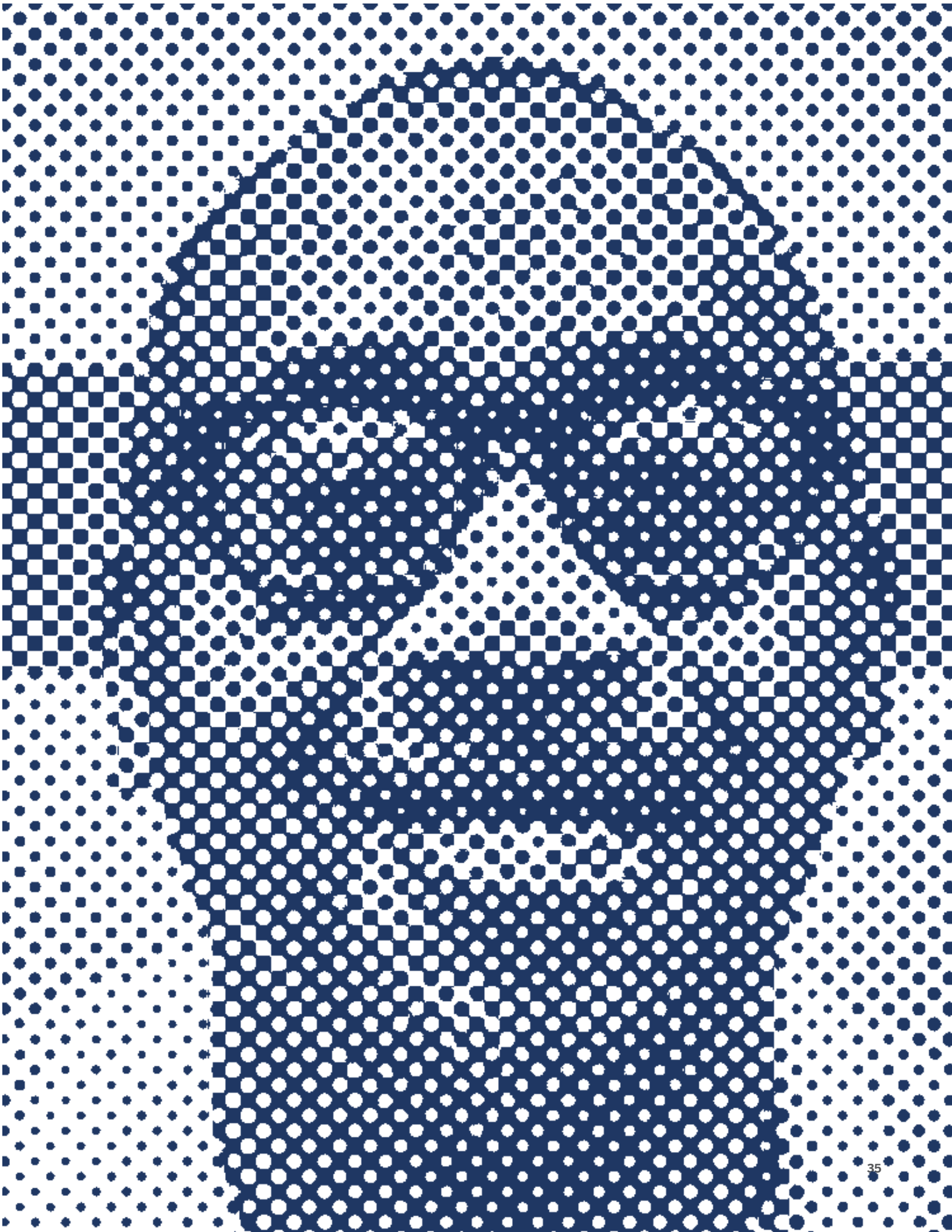
On appeal, the federal district court denied Mr. Holder's requests for independent ballistics testing and for permission to interview jurors to determine if Mr. Shaw's use of racial stereotypes infected their deliberations. Mr. Holder currently seeks executive clemency to spare him from execution.

Missouri prosecutors use “ethnic adjustments” to make Black people with intellectual disability eligible for the death penalty despite a U.S. Supreme Court prohibition.

The U.S. Supreme Court held that executing individuals with intellectual disability is unconstitutional in *Atkins v. Virginia* (2002).⁹³ Of the 145 people who have been removed from death row because of an intellectual disability, the vast majority (83%) have been people of color, and more than two-thirds have been Black (69%). There are many reasons that may explain this racial disparity,⁹⁴ but it is clear that people of color, particularly Black people, are at a greater risk of being sentenced to death than white people with intellectual disabilities. Because the Supreme Court left it to each state to determine how to implement its ruling, one explanation is that the definitions and procedures used by some states appropriated social stereotypes and unfounded assumptions about racial groups. For example, some prosecutors present expert witness testimony that “ethnic adjustments” should be applied to IQ tests and tests of adaptive functioning for people of color. These “ethnic adjustments” take one of two forms typically: (1) adding additional points to an IQ test to compensate for perceived racial bias in IQ testing or (2) having an expert subjectively testify that



any impairments in day-to-day functioning that would be rare for white defendants are not as rare for a person with the defendant's racial, ethnic, and socio-economic background. The result is that courts deem some Black people with intellectual disability ‘not impaired enough’ to be excluded from the death penalty. Missouri is one of eight states where prosecutors were found to have used so-called “ethnic adjustments.” Robert Sanger, the trial lawyer and law professor who authored a 2015 study on this subject, wrote that because people who experienced certain environmental factors “disproportionately populate death row, ethnic adjustments make it more likely that individuals who are actually intellectually disabled will be put to death.”⁹⁵



Ernest Johnson

Ernest Johnson was convicted and sentenced to death in 1995 and executed in 2021 despite strong evidence that he was intellectually disabled. Johnson had shown signs of intellectual disability from a very young age: he was held back twice in grade school, academic tests placed him in the bottom 1–2% in math and reading, and his siblings said he struggled with basic skills such as using a knife and fork. Johnson's mother is also intellectually disabled, and his brother had to be institutionalized because of the severity of his intellectual impairments, demonstrating a family history of intellectual disabilities. Johnson's attorneys also presented evidence that Johnson was born with fetal alcohol spectrum disorder, which is known to be a major cause of intellectual disability.

Johnson's attempts to seek relief for intellectual disability were thwarted based on an opinion from a technician who lacked any training in administering IQ tests or making clinical observations about them. The prosecutor used this testimony to accuse Johnson of intentionally lowering his IQ scores, which consistently fell around or below 70, a number that experts believe is consistent with intellectual disability. Further, he told the jury, "To decide it's more likely true than

not that this guy is mentally retarded is an insult, an insult to these victims." The Missouri Supreme Court ruled against Johnson's intellectual disability claims, crediting this technician's opinions.

A wide range of people called for Johnson's life to be spared. Calling on the governor to stop Mr. Johnson's execution, former Missouri Governor Bob Holden wrote, "A review of pertinent documents has prompted me to concur with advocates that Johnson is most certainly intellectually and developmentally disabled (IDD), and thus constitutionally barred from execution by the *Atkins v. Virginia* U.S. Supreme Court decision." This was particularly notable because Governor Holden had allowed 20 people to be executed while he was in office. Pope Francis and Nimrod Chapel, President of the Missouri Conference of the NAACP, also called on Governor Mike Parson to exercise clemency.

Chapel urged people to view Johnson's case within its social context. Less than two months before Mr. Johnson's scheduled execution, Governor Parsons pardoned a white couple who pointed guns at peaceful Black Lives Matter demonstrators.

Johnson was executed on October 5, 2021.

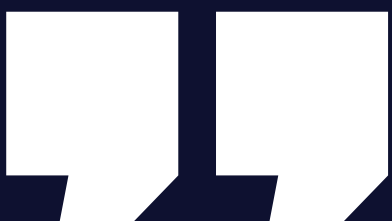


As much as society wants to move beyond our past, the vestiges of racial injustice, institutional marginalization and systemic dehumanization linger on through systems like the death penalty. ...

[T]he barbarism and cruelty of executing a Black man with an intellectual and developmental disability illustrate these horrors clearly.”⁹⁶

Nimrod Chapel

President of the Missouri Conference of the NAACP



MAP OF
BERLY
Missouri

Published by
K. C. OLSON
Ph. 1891 R

1000 0

LEGEND

- Highways
- Moberly
- Parks & C
- Lakes
- Schools
- Churches

PT MADE
NCH FOUR
KS SUNDAY

ing Up on Branch
hich Breaks—One
en He Tries to

Nov. 17.—One negro
her missing and two
ely back in jail, today
empt to lynch them.

attempt was made af-
roes were charged with
eating Edward Thomp-

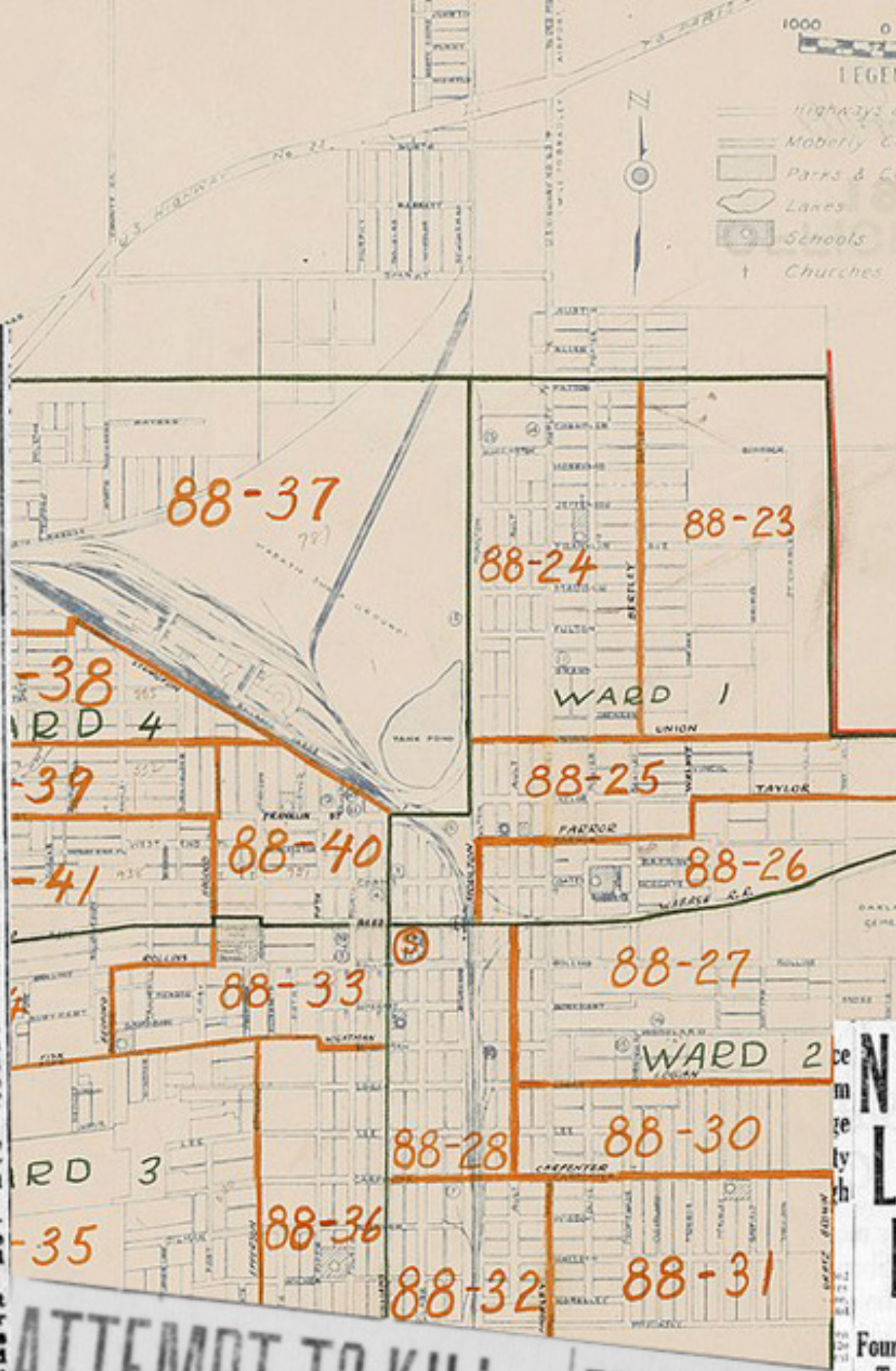
ro had not been identi-
was shot to death when
a crowd of more than
ked men. A noose had
out his neck and he
d up when the limb of

attempted to hang the
the same time. They
on the same limb and
g down.

said they were from Chi-
ve their names as Alie
rge Adams, Sanford
es Anderson.

owd started in pursuit
egroes said to be leader
ymen, the three oth-
ty authorities located
was arrested late last

had been held in jail
ving a threat at lynch-
ht after their arrest. A



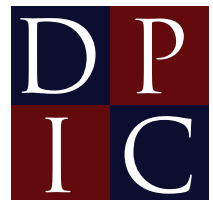
ATTEMPT TO KILL

FRANCE DEF
RADICAL

ce
m
ge
ly
h
N
L
Four
Ta

Conclusion

The shared history of a community is powerful. It is also sometimes painful. But the lessons learned from the mistakes of the past are important to any society that hopes to do better than previous generations. This Report describes how today's use of capital punishment in Missouri is on a continuum that began in the days of slavery. The stories and data presented here support the view that racial bias continues to affect many aspects of the criminal legal system and the death penalty in particular. Racism and racial violence are part of Missouri's story. That cannot change. But there can be meaning from the mistakes of the past if they give us the ability to shape a better future. In this way, viewing the present-day use of the death penalty through the lens of history may help Missourians chart a better path forward.



Endnotes

- 1 1824, Missouri Session Laws, Volume I, Part I, pages 27-34 <https://cdm16795.contentdm.oclc.org/digital/collection/molaws/id/42078>
- 2 Floyd Shoemaker, *Missouri's Struggle for Statehood: 1804–1821* 335 (2013).
- 3 M. Watt Espy & John Ortiz Smykla, *Executions in the United States, 1608- 2002: The Espy File*, Inter-university Consortium for Political and Social Research (4th ICPSR ed. 2016). Before 1930, there was no national tracking of executions. The number of early executions included in this report reflects estimates from researchers.
- 4 Census for 1820: Aggregate of the whole Number and Enumeration of Persons in the Territory of Missouri, U.S. Census Bureau 159 (1821); Eleventh Census – Volume I. (Part I and Part II) Report on Population of the United States: Sex, General Nativity, and Color, U.S. Census Bureau 396–397 (1895).
- 5 Harriet C. Frazier, *Death Sentences in Missouri, 1803–2005: A History and Comprehensive Registry of Legal Executions, Pardons, and Commutations* 35 (2006).
- 6 Harriet C. Frazier, *Death Sentences in Missouri, 1803–2005: A History and Comprehensive Registry of Legal Executions, Pardons, and Commutations* 35 (2006).
- 7 Harriet C. Frazier, *Death Sentences in Missouri, 1803–2005: A History and Comprehensive Registry of Legal Executions, Pardons, and Commutations* 28, 120 (2006). Some accounts state that Slave Mat was 12 years old. Frazier notes that during the antebellum period, there were no birth certificates issued in Missouri; families were responsible for keeping their own birth records. Most slave owners did not write down birthdates for those they enslaved and, as such, the exact ages of enslaved people are often unknown.
- 8 Harriet C. Frazier, *Death Sentences in Missouri, 1803–2005: A History and Comprehensive Registry of Legal Executions, Pardons, and Commutations* 28 (2006).
- 9 Harriet C. Frazier, *Death Sentences in Missouri, 1803–2005: A History and Comprehensive Registry of Legal Executions, Pardons, and Commutations* 26–27, 120 (2006).
- 10 1900 Census: Volume I. Population, Part 2: Color, State or Territory of Birth, Country of Birth, Foreign Parentage, Citizenship, and Years in the United States, U.S. Census Bureau cxii (1901); 1960 Census – Population, Supplementary Reports: Negro Population, by County 1960 and 1950, U.S. Census Bureau 2 (1966).
- 11 M. Watt Espy & John Ortiz Smykla, *Executions in the United States, 1608- 2002: The Espy File*, Inter-university Consortium for Political and Social Research (4th ICPSR ed. 2016).
- 12 Walter Johnson, *The Broken Heart of America: St. Louis and the Violent History of the United States* 86-87 (2020).
- 13 *Dred Scott v. Sandford*, 60 U.S. 393 (1856).
- 14 Walter Johnson, *The Broken Heart of America: St. Louis and the Violent History of the United States*, 73–77 (2020).
- 15 Quinn Malloy, *New data on an old disgrace: Missouri had second highest number of lynchings outside Deep South*, *Columbia Missourian* (July 2, 2017); See Charles Seguin & David Rigby, *National Crimes: A New National Data Set of Lynchings in the United States, 1883 to 1941*, 5 *Socius* 2 (2019).
- 16 See Charles Seguin & David Rigby, *National Crimes: A New National Data Set of Lynchings in the United States, 1883 to 1941*, 5 *Socius* 2 (2019).
- 17 Walter Johnson, *The Broken Heart of America: St. Louis and the Violent History of the United States*, 191 (2020).
- 18 On this Day – April 14, 1906: Horace Duncan and Fred Coker Lynched in Springfield, Missouri, Equal Just. Initiative (last visited Oct. 26, 2023).
- 19 Leonna Huering, *80 Years Later: Remembrance and Reconciliation of Cleo Wright Lynching Slated for Sunday*, *Standard Democrat* (Jan. 21, 2022).
- 20 *The Lynching of Cleo Wright Becomes 'A Disgraceful Blot on the State of Missouri' in 1942*, *St. Louis Post Dispatch* (Jan 25, 2023).
- 21 Leonna Huering, *80 Years Later: Remembrance and Reconciliation of Cleo Wright Lynching Slated for Sunday*, *Standard Democrat* (Jan. 21, 2022).
- 22 Harriet C. Frazier, *Death Sentences in Missouri, 1803–2005: A History and Comprehensive Registry of Legal Executions, Pardons, and Commutations* 36–37 (2006).
- 23 Harriet C. Frazier, *Death Sentences in Missouri, 1803–2005: A History and Comprehensive Registry of Legal Executions, Pardons, and Commutations* 72 (2006).
- 24 *Id.*
- 25 Equal Just. Initiative, *Lynching in America: Confronting the Legacy of Racial Terror* 5 (3rd ed. 2017).
- 26 *Id.* at 95; James R. Acker and Charles Lanier, "Beyond Human Ability? The Ride and Fall of Death Penalty Legislation," in *America's Experiment with Capital Pun-*

- ishment, 2nd ed., edited by James R. Acker, Robert M. Bohm, and Charles S. Lannier (Durham: Carolina Academic Press, 2003), 85–125, 91.
- 27 Harriet C. Frazier, *Death Sentences in Missouri, 1803–2005: A History and Comprehensive Registry of Legal Executions, Pardons, and Commutations* 102 (2006).
- 28 *Id.* at 34, 93.
- 29 Walter Johnson, *The Broken Heart of America: St. Louis and the Violent History of the United States*, 238 (2020); Bayeté Ross Smith, 'Black skin was a death warrant': how the East St Louis race massacre was an omen for racial violence to come, *The Guardian* (Dec. 18, 2021).
- 30 Walter Johnson, *The Broken Heart of America: St. Louis and the Violent History of the United States*, 239 (2020).
- 31 Walter Johnson, *The Broken Heart of America: St. Louis and the Violent History of the United States*, 242 (2020); *On this Day – Jul 03, 1917: White Mobs Terrorize Black Residents in East St. Louis Riots, Equal Just. Initiative* (last visited Oct. 26, 2023).
- 32 Tim O'Neil, *Race Hatred, Workforce Tensions Exploded in East St. Louis in 1917*, *St. Louis Post-Dispatch* (July 2, 2023).
- 33 Allison Keyes, *The East St. Louis Race Riot Left Dozens Dead, Devastating a Community on the Rise*, *Smithsonian Mag.* (June 30, 2017); *On this Day – Jul 03, 1917: White Mobs Terrorize Black Residents in East St. Louis Riots, Equal Just. Initiative* (last visited Oct. 26, 2023).
- 34 June 21, 1949: *St. Louis Tries to Integrate Its Pools, Causing Race Riots and Social Change*, *St. Louis Post-Dispatch* (June 21, 2023); Walter Johnson, *The Broken Heart of America: St. Louis and the Violent History of the United States*, 262 (2020).
- 35 Walter Johnson, *The Broken Heart of America: St. Louis and the Violent History of the United States*, 263 (2020).
- 36 Walter Johnson, *The Broken Heart of America: St. Louis and the Violent History of the United States*, 264 (2020); Emma Newcombe, *The Legacy of the St. Louis Municipal Pool Race Riots, Governing* (Aug. 15, 2021).
- 37 Dia Wall and Hailey Godburn, *1968 Kansas City Race Riots: Then & Now*, *KSHB* (Apr. 4, 2018); David R. Hardy, Robert P. Ingram, Arthur Mag, Malcom Smith, and Charles B. Wilkinson, *Final Report: Mayor's Commission on Civil Disorder* (Aug. 15, 1968).
- 38 David R. Hardy, Robert P. Ingram, Arthur Mag, Malcom Smith, and Charles B. Wilkinson, *Final Report: Mayor's Commission on Civil Disorder* 30-31 (Aug. 15, 1968).
- 39 David R. Hardy, Robert P. Ingram, Arthur Mag, Malcom Smith, and Charles B. Wilkinson, *Final Report: Mayor's Commission on Civil Disorder* 31 (Aug. 15, 1968).
- 40 Dia Wall and Hailey Godburn, *1968 Kansas City Race Riots: Then & Now*, *KSHB* (Apr. 4, 2018).
- 41 *Community Oriented Policing Services Critical Response Initiative, After-action Assessment of the Police Response in Ferguson, Missouri*, U.S. Dept. of Justice 116 (2015); *The Ferguson Commission, Forward Through Ferguson: A Path Toward Racial Equality* 26 (Oct. 14, 2015).
- 42 *The Ferguson Commission, Forward Through Ferguson: A Path Toward Racial Equality* 26–27 (Oct. 14, 2015).
- 43 See generally *Community Oriented Policing Services Critical Response Initiative, After-action Assessment of the Police Response in Ferguson, Missouri: Use of Force* 41–52 U.S. Dept. of Justice (2015).
- 44 *Community Oriented Policing Services Critical Response Initiative, After-action Assessment of the Police Response in Ferguson, Missouri: Use of Force* xvii U.S. Dept. of Justice (2015).
- 45 *Am. Civ. Liberties Union, War Comes Home: The Excessive Militarization of American Policing* 3 (June 2014).
- 46 Frank R. Baumgartner, Christian Caron, and Scott Duxbury, *Racial Resentment and the Death Penalty*, 8 *J. of Race, Ethnicity, and Pol.* 16 (2022).
- 47 *Death Penalty Census Database: Missouri*, *Death Penalty Information Center* (last visited Oct. 26, 2023).
- 48 *Execution Database: Missouri*, *Death Penalty Information Center* (last visited Oct. 26, 2023).
- 49 *QuickFacts: Missouri*, U.S. Census Bureau (July 1, 2022).
- 50 *National Incident-Based Reporting System Details Reported in Missouri (2022): Homicide Offender vs. Victim Demographics*, *Federal Bureau of Investigation* (last visited Oct. 26, 2023).
- 51 See generally Pablo Fajnzylber, Daniel Lederman, and Norman Loayza, *Inequality and Violent Crime*, *J. of Law and Econ.* (April 2002); Robert Muggah and Sameh Wahba, *How Reducing Inequality Will Make Our Cities Safer*, *World Bank Blogs* (March 2, 2020).
- 52 Ana Hernández Kent, *Racial Inequality Looms Large in Missouri. How about in Your State?*, *Federal Reserve Bank of St. Louis Open Vault Blog* (Aug. 25, 2020).

- 53 According to the FBI's Crime Data Explorer, 53% of U.S. homicide victims from 2012–2022 were Black and 42% were white. As of July 1, 2022, Black people comprise 13.6% of the U.S. population, and white people make up 75.5%. This suggests a disparity in the racial makeup of homicide victims. Crime Data Explorer: Homicide Offender vs. Victim Demographics (2012–2022), Fed. Bureau of Investigation (last visited Oct. 26, 2023); QuickFacts: United States, U.S. Census Bureau (last visited Oct. 26, 2023).
- 54 Executions by Race and Race of Victim, Death Penalty Info. Ctr. (last visited Oct. 26, 2023).
- 55 Frank Baumgartner, *The Impact of Race, Gender, and Geography on Missouri Executions*, 1 (July 16, 2015).
- 56 Frank Baumgartner, *The Impact of Race, Gender, and Geography on Missouri Executions*, 4 (July 16, 2015).
- 57 Frank Baumgartner, *The Impact of Race, Gender, and Geography on Missouri Executions*, 2 (July 16, 2015). While there is limited Missouri homicide victim data publicly available for most years after 1999, the FBI reports that from 2021–2022, whites made up 31% of all homicide victims in the state. National Incident-Based Reporting System (NIBRS) Details Reported in Missouri: Homicide, 2021–2022, Fed. Bureau of Investigation (last visited Oct. 26, 2023).
- 58 Monica Obradovic, *Missouri's Black Homicide Victimization Rate Again Highest in US*, Riverfront Times (Apr. 27, 2023).
- 59 Katherine Barnes, David Sloss, and Stephen Thaman, *Place Matters (Most): An Empirical Study of Prosecutorial Decision-Making in Death-Eligible Cases*, 51 *Ariz. L. Rev.* 349 (2009).
- 60 Michael Lenza, David Keys, and Teresa Guess, *The Prevailing Injustices in the Application of the Missouri Death Penalty (1978 to 1996)*, 32 *Social Justice* 2, 151, 158 (2005).
- 61 Richard C. Dieter, *The 2% Death Penalty: How a Minority of Counties Produce Most Death Cases At Enormous Costs to All*, Death Penalty Info. Ctr. 27 (Oct. 2013).
- 62 Tiana Herring, *Deeply Rooted: How Racial History Informs Oklahoma's Death Penalty*, Death Penalty Info. Ctr. 29 (Oct. 2022).
- 63 Richard C. Dieter, *The 2% Death Penalty: How a Minority of Counties Produce Most Death Cases At Enormous Costs to All*, Death Penalty Info. Ctr. 27 (Oct. 2013).
- 64 Frank Baumgartner, *Homicides, Capital Prosecutions, and Death Sentences in St. Louis County, Missouri, 1991–2018*, 8-9 (Sept. 20, 2022).
- 65 Frank Baumgartner, *Homicides, Capital Prosecutions, and Death Sentences in St. Louis County, Missouri, 1991–2018*, 8-9 (Sept. 20, 2022).
- 66 Ryan Krull, *Former St. Louis County Prosecutor Bob McCulloch Has No Regrets*, Riverfront Times (Nov. 9, 2022); Alice Speri, *Five Years After Ferguson, St. Louis County's New Prosecutor Confronts a Racist Criminal Justice System*, The Intercept (Jan. 24, 2019).
- 67 Prosecutorial Accountability, Death Penalty Information Center (last visited Oct. 26, 2023).
- 68 Death Penalty Census Database: Missouri, Death Penalty Info. Ctr. (last visited Oct. 26, 2023).
- 69 Prosecutorial Accountability, Death Penalty Info. Ctr. (last visited Oct. 26, 2023).
- 70 Samuel R. Gross, Maurize Possley, Ken Otterbourg, Klara Stepgens, Jessica W. Paredes, and Barbara O'Brien, *Race and Wrongful Convictions in the United States 2022*, Nat'l Registry of Exonerations 6 (Sept. 2022).
- 71 Innocence Database: Missouri, Death Penalty Information Center (last visited Oct. 26, 2023).
- 72 Alexandra Gross, Joseph Amrine, Nat'l Registry of Exonerations (July 23, 2015).
- 73 Emily Hoerner, *Missouri Attorney General's Office Pushes to Keep Innocent People in Prison*, Injustice Watch (Sept. 11, 2020).
- 74 Equal Just. Initiative, *Lynching in America: Confronting the Legacy of Racial Terror* 62 (3rd ed. 2017).
- 75 Laura Denvir Stith, *A Contrast of State and Federal Court Authority To Grant Habeas Relief*, 38 *Val. U. L. Rev.* 421, 421 (2004).
- 76 Chris Hacker et al., *A "Coin Flip": Nearly Half of U.S. Murders Go Unsolved as Cases Rise*, CBSNews (June 29, 2022).
- 77 Missouri: Approach to Law Enforcement, Police Scorecard (last visited Oct. 26, 2023).
- 78 Fatal Police Violence by Race and State in the USA, 1980–2019: A Network Meta-Regression, 398 *Lancet* 1239, 1245–1247 (Oct. 2, 2021).
- 79 Missouri: Key Findings, Police Scorecard (last visited Oct. 26, 2023).
- 80 Counties With Highest Rates of Killings by Police Also Among Highest in Death Sentences, Death Penalty Information Center (Dec. 4, 2015).
- 81 St. Louis City: Police Violence, Police Scorecard (last visited Oct. 26, 2023).
- 82 St. Louis County: Police Violence, Police Scorecard (last visited Oct. 26, 2023).
- 83 Glenn E. Rice, *Missouri Appeals Court Upholds Conviction of White KC Cop in Killing of Black Man*, The Kansas City Star (Oct. 18, 2023); Glenn E. Rice and Luke Nozicka, *'It Is Extremely Rare': KC Lawyers Shocked Ex-detective Guilty in Killing Is Out on Bond*, The Kansas City Star (Oct. 18, 2023).
- 84 endnote
- 85 Investigation of the Ferguson Police Department, U.S. Dept. of Justice Civ. Rights Div. 4 (Mar. 4, 2015).
- 86 Investigation of the Ferguson Police Department, U.S. Dept. of Justice Civ. Rights Div. 5 (Mar. 4, 2015).

- 87 Beginning in the late 1800s, the Supreme Court held that excluding Black jurors based solely on their race was unconstitutional under the Equal Protection Clause. See, e.g., *Ex parte Virginia*, 100 U.S. 339 (1879); *Gibson v. Mississippi*, 162 U.S. 565 (1896). However, the Court offered no meaningful way to prove a juror had been struck based on race. In *Swain v. Alabama* (1965), the Court upheld a death sentence where the prosecutor struck all six Black potential jurors and no Black juror had been empaneled in the county since 1950. The Court ruled that the Constitution did not require an examination of a prosecutor's reasons for a peremptory strike, and even the removal of all Black people from the jury would not overcome the presumption that the prosecutor's strikes were lawful. The Court elaborated that a defendant could attain relief if he showed proof of systematic exclusion of Black people, but that the defendant had failed to do so. The Equal Justice Initiative found that the Court "set the bar so high for proving discriminatory intent that no litigant won a Swain claim for 20 years." *Illegal Racial Discrimination in Jury Selection: A Continuing Legacy*, Equal Justice Initiative (2010).
- 88 *Smulls v. Missouri*, petition for cert.; Joe Harris, *Lawmakers, Clergy Blast Racism in St. Louis County Death Cases*, Courthouse News Service (April 3, 2015).
- 89 Catherine M. Grosso & Barbara O'Brien, *A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-Batson North Carolina Capital Trials*, 97 *Iowa L. Rev.* 1531 (2012).
- 90 William J. Bowers, Benjamin D. Steiner, & Maria Sandys, *Death Sentencing in Black and White: An Empirical Analysis of the Role of Jurors' Race and Jury Racial Composition*, 3 *U. Pa. J. Const. L.* 171 (2001)e
- 91 Ngozi Ndulue, *Enduring Injustice: The Persistence of Racial Discrimination in the U.S. Death Penalty*, *Death Penalty Information Center* 43 (Sept. 2020). See also John H. Blume, *An Overview of Significant Findings from the Capital Jury Project and Other Empirical Studies of the Death Penalty Relevant to Jury Selection, Presentation of Evidence and Jury Instructions in Capital Cases* (2008).
- 92 Ken Otterbourg, Kevin Strickland, *Nat'l Registry of Exonerations* (Apr. 12, 2023).
- 93 *Atkins v. Virginia*, 536 U.S. 304 (2002).
- 94 Even outside of potential racial bias issues, there are several factors that contribute to this racial disparity, including a lack of access to healthcare and misdiagnoses. See Latoya Hill, Nambi Ndugga, and Samantha Artiga, *Key Data on Health and Health Care by Race and Ethnicity*, KFF (Mar. 15, 2023).
- 95 *Is Racially Biased Testimony Wrongly Subjecting Intellectually Disabled Defendants to the Death Penalty?*, *Death Penalty Info. Ctr.* (Feb. 16, 2018).
- 96 *Missouri Moves to Execute Intellectually Disabled Death-Row Prisoner, As Former Governor, Court Justice, and Faith and Rights Leaders Seek Mercy*, *Death Penalty Info. Ctr.* (Oct. 1, 2021); *Missouri Scheduled to Execute Man Despite Evidence of Intellectual Disability*, *Death Penalty Info. Ctr.* (Nov. 3, 2015).