

# Arbitrariness and the Death Penalty

## A Fact Sheet from the Death Penalty Information Center

The 30<sup>th</sup> anniversary of *Gregg v. Georgia* raises the fundamental question of whether the death penalty remains arbitrary and capricious even after the Supreme Court's approval of new state statutes in 1976. After finding the death penalty unconstitutional four years earlier in *Furman v. Georgia*, the Court could only make a prospective judgment that the new laws would sufficiently guide juries in a way that would avoid the randomness of the past. After 30 years of experience, and with over 1,000 executions, it is now possible to assess the application of the death penalty in concrete ways.

The Justices who found the death penalty unconstitutional in 1972 expressed many concerns about the way it was being practiced. Justices Brennan and Marshall found the death penalty to be so fundamentally flawed that it should be declared cruel and unusual. Justice Douglas stated that the haphazardness of the death penalty invited racial bias. The death penalty, he wrote, was "pregnant with discrimination."

Justices Stewart and White noted that a punishment that was so rarely applied required a clear basis for its selectivity. Yet no rationale could be found. Justice White said that there was no way to distinguish the few cases in which it was imposed from the many in which it was not. And amidst many murders, a punishment that was invoked so infrequently could not be justified for its deterrent or retribution value. Justice Stewart said the randomness of the death penalty was cruel in the same sense that being struck by lightning was cruel.

### **The death penalty today remains *arbitrary*:**

There have been 1,025 executions since the death penalty was reinstated in 1976 (as of June 2, 2006):

- 80% of the executions involved murders of **white victims**; generally, less than 50% of murder victims are white.
- 82% of the executions took place in the **South**
- 45% of the executions were in only **2 states**: Texas and Virginia

- 4 executions, less than 1%, were in the **Northeast**; all were of defendants who waived their appeals.

### **The death penalty is still *rarely applied*:**

- In 2004, there were **16,137** murders, **125** death sentences, and **59** executions
- The annual number of death sentences has dropped by **60%** in the past five years
- **Most states** with the death penalty had no executions in 2005
- At the current pace, executions in 2006 will be about **half** the number in 1999.

### **The death penalty is not applied only to the “*worst of the worst*” offenders. The following individuals did NOT receive the death penalty:**

- Gary Ridgway (WA) – confessed to killing 48 women
- Charles Cullen (NJ) – a nurse, who confessed to killing 17 patients
- Zacarias Moussaoui (FED) – admitted to conspiracy leading to Sept. 11, 2001 terror attacks
- Stephen (the “Rifleman”) Flemmi (FED) – confessed to killing 10 people
- Eric Rudolph (FED) – confessed to killing two people including a doctor and setting bombs at the Olympics in Atlanta and at a gay nightclub
- Ted Kaczynski (FED) – confessed to being the Unabomber
- Larry Bright (IL) – confessed in May 2006 to killing 8 black women. He burned some of his victims to ash and bits of bone in his mother's backyard.

### **The death penalty is failing to meet public policy objectives such as protecting the innocent or deterring murder:**

- Since 1973, 123 people who were sentenced to death have been **exonerated**.

- There is increasing evidence that **innocent people** have been executed in recent years: investigations into the cases of Cameron Willingham (TX), Ruben Cantu (TX), and Larry Griffin (MO) indicate that they likely were innocent.
- States with the death penalty consistently have higher **murder rates** than states without the death penalty.
- The **South**, which accounts for over 80% of the executions in the country, has the highest murder rate. The **Northeast**, which has the fewest executions, has the lowest murder rate.
- Every study on the **costs** of the death penalty has concluded that it is considerably more expensive than using life sentences.
- The public has been steadily moving towards support of **life without parole** over the death penalty. A May 2006 Gallup Poll found the highest preference for life without parole (48%) in over 20 years:

