

US death penalty study exposes a system rife with errors

Seven of ten cases "seriously flawed"

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A recent study on the death penalty in the United States exposes a system fraught with error and inequities. The US has come under increasing international criticism for continuing the barbaric practice of capital punishment, putting to death 54 people so far this year and 98 in 1999. This new study indicates the high probability that innocent people are being sent to their deaths.

The study, entitled *The Justice Project*, was conducted by a team of lawyers and criminologists from Columbia University in New York, headed by James S. Liebman, a professor of law who has served as a defender in a number of death penalty trials and appeals. The group released its findings on June 12.

The Justice Project studied the 4,578 capital cases, out of a total of 5,760, that were appealed between 1973 and 1995. It was the first statistical study of its kind ever undertaken.

One in 19, or 313 of these cases, resulted in an execution. The study found "serious, reversible error" in 68 percent of cases—or nearly 7 out of every 10—that were fully reviewed at the state and federal level.

The study's authors note: "Capital trials produce **so many mistakes** that it takes three judicial inspections to catch them—leaving **grave doubt whether we do catch them all**. After state courts threw out **47%** of death sentences due to serious flaws, a later federal review found 'serious error'—error undermining the reliability of the outcome—in **40%** of the remaining sentences" (*emphasis in the original*).

Factors leading to the reversal of death sentences included incompetent defense counsel and police or prosecutorial misconduct. Defense lawyers—many underpaid and unqualified—routinely miss or fail to look

for important evidence that would exonerate their clients or cast doubt on their guilt. The report documents hundreds of cases in which police and prosecutors deliberately withheld evidence from defense attorneys and juries that would have constituted reasonable doubt of a defendant's guilt.

The Justice Project found that these error rates exist across the country. Of the 34 US states with capital punishment, over 90 percent have overall error rates of 52 percent or higher, and 85 percent have error rates of 60 percent or higher.

Last February, Illinois Governor George Ryan imposed a temporary halt on executions in the state after 13 men were removed from death row after being exonerated or seeing the prosecution case collapse upon appeal. While some death penalty proponents claimed the situation in Illinois was an exception to the rule, the Columbia study found reversal rates in the state to be slightly below the national average—66 percent as opposed to 68 percent nationally.

Death sentences can be reviewed at three levels—"direct review" by a state high court, post-conviction appeal to a state court, and habeas corpus petition to a federal court. Of the 4,578 cases included in the study, 1,885, or 41 percent, were thrown out at the state direct review level because of error that "seriously undermined the reliability of the outcome or otherwise 'harmed' the defendant," according to the report.

Of the remaining 59 percent that went on to the state courts in the post-conviction stage, at least 10 percent were turned back due to serious flaws. Of the 53 percent that were upheld through these two phases and went on to federal habeas corpus review, 40 percent (or

an additional 21 percent of the original cases) were thrown out due to serious errors. In other words, following full review, 68 percent of capital cases were found to be seriously flawed.

In states where few capital convictions were overturned, the low rate appears to be related to limitations imposed by the states on the review of capital judgments, rather than a low level of errors. Virginia, which has executed 76 people since 1976 (second to Texas, with 221), has the lowest overall error rate at the state post-conviction level—only 18 percent. The study notes the harsh restrictions placed on condemned inmates' rights to appeal in Virginia, including the limitation of a defendant's ability to petition for a new trial based on innocence to a 21-day period following conviction, the shortest in the nation. Virginia courts also prohibit even egregious trial errors from being considered on appeal if they were not objected to at trial. With indigent defendants making up 97 percent of the state's death row population, it is not surprising that underpaid and incompetent attorneys assigned to their cases often fail to pursue legal avenues that might win their acquittal or appeal.

Of the 2,370 death sentences thrown out due to serious error, 90 percent were overturned at the state level. A large number of these sentences were overturned by the same judges who imposed the death sentence in the first place. The report notes that many of these judges would only be inclined to overturn a death sentence if there were glaring errors. This means that a substantial number of sentences that survive state-level review are still seriously flawed when they reach the federal level.

Legislation enacted under the Clinton administration has severely restricted the rights of death row inmates to appeal their sentences at the federal level. Under provisions of the Antiterrorism and Effective Death Penalty Act of 1996, federal review of death penalty cases is limited to one year.

Given the fact that grossly flawed cases are able to stand up through two stages of state review, restrictions placed on the time allowed at the federal appeal level increase the likelihood that innocent people are being put to death. While death penalty supporters have clamored for streamlining the appeals process, it should be noted that condemned inmates often languish for a decade or more on death row before being found

innocent or having their death sentence commuted. Shortening the federal appeals process will result in fewer wrongful convictions being overturned.

The Justice Project study refutes two claims made by death penalty supporters: that capital punishment deters crime and that it provides relief to murder victims' families. In relation to the first, the study found no relationship between the number of executions carried out by a state and the rate of homicides. As for the second, the study suggested that, considering the high rate of flawed sentences, the drive to impose the death penalty was driven more by the ambitions of overzealous prosecutors than by concern for families of homicide victims.

One factor contributing to convictions in capital trials is the fact that there is no plea bargaining in these cases. While in other felony cases, up to 90 percent of victims end up pleading guilty and making a deal with the prosecution, hoping to receive a less severe sentence, this option is not available to capital defendants. Prosecutors, under pressure to win a conviction, often resort to unscrupulous methods, including the withholding of exculpatory evidence.

The Justice Project study paints an overall picture of a death penalty system rife with error. They conclude: "If what were at issue here was the fabrication of toasters ... or the processing of social security claims, or the pre-takeoff inspection of commercial aircraft ... neither the consuming and the taxpaying public, nor managers and investors, would for a moment tolerate the error-rates and attendant costs that dozens of states and the nation as a whole have tolerated in their capital punishment system for decades."



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