

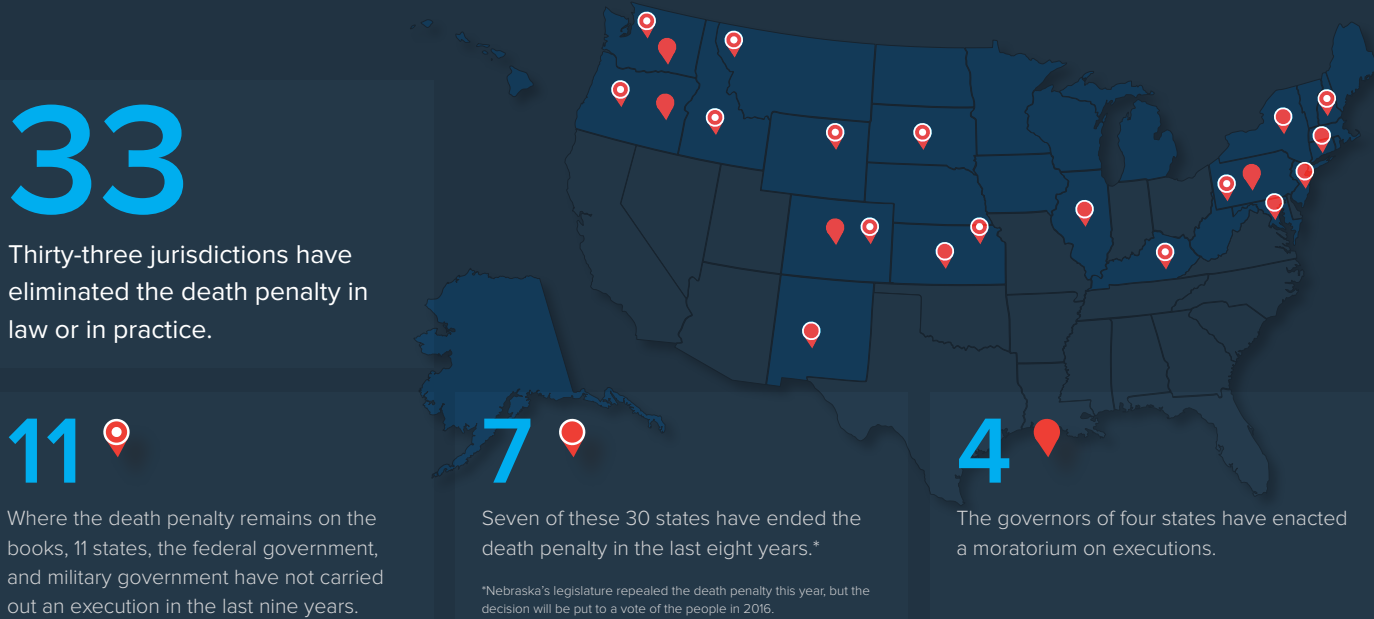
AMERICA HAS ABANDONED THE DEATH PENALTY

OUR NATION IS DEEPLY SKEPTICAL OF CAPITAL PUNISHMENT.

There is growing consensus that the death penalty should be replaced with life without parole sentences. More and more jurisdictions are abandoning capital punishment; either formally, through legislation, or informally, by not imposing new death sentences or carrying out executions.

STATES ARE REPLACING THE DEATH PENALTY WITH LIFE WITHOUT PAROLE.

Most states in the union have abandoned the death penalty in law or in practice. Thirty-three jurisdictions, including 30 states and the District of Columbia, the federal government and the U.S. military, have either formally eliminated the death penalty or have not carried out an execution in the last nine years.

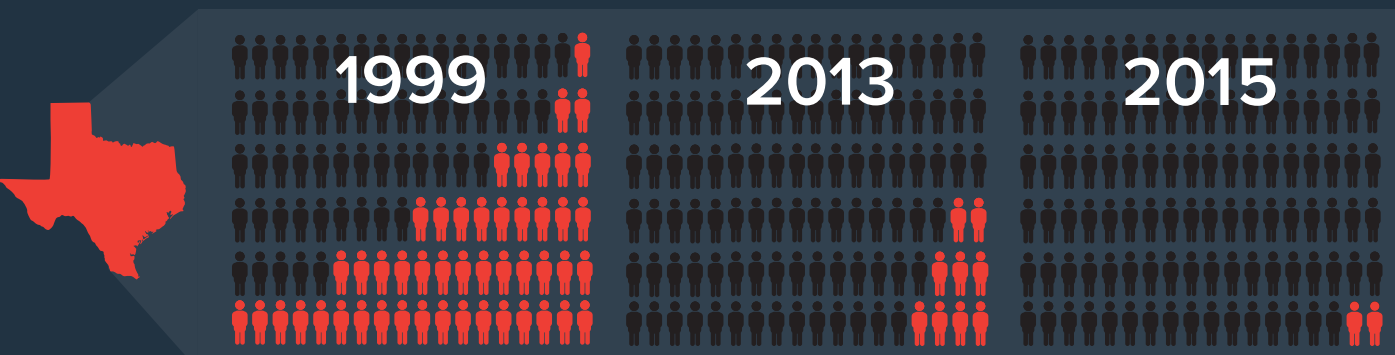


JURISDICTIONS ARE CARRYING OUT FEWER EXECUTIONS.

Among states that continue to use capital punishment, there has recently been a substantial decline in the number of executions performed. In 2015, only six states carried out an execution.

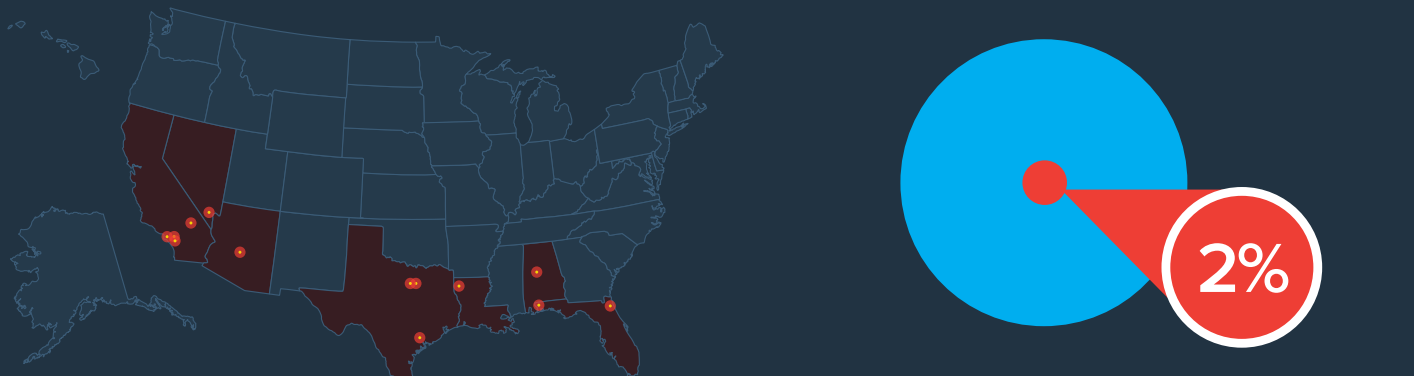
JURIES ARE IMPOSING FEWER DEATH SENTENCES.

Death sentences imposed by juries have been rapidly declining in the last 15 years.



JUST A HANDFUL OF COUNTIES ACCOUNT FOR THE VAST MAJORITY OF DEATH SENTENCES.

The death penalty is geographically isolated. On the whole, it is now unusual to find capital punishment in the United States.



THE DEATH PENALTY IS TOO BROKEN TO FIX.

The counties that continue to use the death penalty today don't reflect communities more eager to inflict capital punishment. They just suffer from common traits of eager, even odd, prosecutors; bad defense lawyers and racism.

OVERZEALOUS PROSECUTORS

The death penalty in these counties is personality-driven. Only a tiny number of prosecutors produce the death sentences. Dale Cox, the district attorney of Caddo Parish, Louisiana, is responsible for one third of the death sentences in the state since 2010. He has said, **"I think we need to kill more people,"** once referred to society as a "jungle," and urged jurors to sentence a defendant to death because Jesus said to put a millstone around the necks of abusers and drown them at sea.

Juan Martinez, a prosecutor in Maricopa County, argued in one case that the defendant was more of a future danger to society because he had hepatitis and could infect other prisoners.

INEFFECTIVE LAWYERS

These counties are defined by poorly performing lawyers who rarely give the jury a reason to save the defendant's life. Refik Eler, a lawyer in Duval County, Florida, represented eight people sentenced to death since 2008. In three separate death penalty cases, courts have found that Eler provided his client with ineffective assistance of counsel. In one case he failed to: conduct a basic factual investigation of the circumstances of the crime, secure the testimony of alibi witnesses, or investigate evidence of "organic brain damage and intellectual disability."

"It was like he had no attorney," Marty McClain, one client's new lawyer, told the Florida Times-Union.

RACISM

Death sentences in outlier counties are often the product of racial prejudice.

For decades, a confederate flag flew outside the Caddo Parish, Louisiana, courthouse where death penalty trials took place. And, despite the fact that almost half the population in Caddo Parish is black, **Caddo prosecutors are three times as likely to remove a prospective black juror** than a white juror.

In Harris County, Texas, a prosecutor elicited testimony from a psychologist that Duane Buck, a black man now on death row in the state, posed a future danger to society because of his race.

The few remaining death penalty counties are characterized by wrongful executions and death sentences.

THE SYSTEM FAILS SOME OF THE MOST VULNERABLE DEFENDANTS.

The 8th Amendment prohibits the death penalty for juveniles or intellectually disabled people. The broader point, though, is that **executing people with serious functional impairments crosses a moral line.**

In 2013, Florida executed John Ferguson, a paranoid schizophrenic who became increasingly hostile and delusional after suffering a gunshot wound to the head. Ferguson believed he was the "Prince of God" who could not be killed and would rise up after his execution and fight alongside Jesus to save the United States from a communist plot.

WE HAVE SENTENCED TO DIE—AND LIKELY EXECUTED—INNOCENT PEOPLE.

A 2014 study offered a conservative "estimate that **if all death-sentenced defendants remained under sentence of death indefinitely at least 4.1% would be exonerated.**"

Paul House claimed at his trial that scratches on his arm came from "tearing down a building, and from a cat," and not as the result of a struggle with the victim. Chief Justice John Roberts mockingly commented on House's version of events: "Scratches from a cat, indeed." In 2009, House was exonerated by DNA evidence after 22 years on Tennessee's death row.

"I believe it highly likely that the death penalty violates the Eighth Amendment."

—JUSTICE STEPHEN BREYER

2015 EXECUTIONS

A **BROKEN** CAPITAL PUNISHMENT SYSTEM

The Eighth Amendment prohibits the death penalty for juveniles and the intellectually disabled. The broader principle, though, is that executing people with crippling mental impairments crosses a moral line.

CRIPPLING DISABILITIES AND UNCERTAIN GUILT DEFINE EXECUTIONS IN 2015

In 2015, America had the lowest number of executions in 25 years. Of the 28 people executed, **75% were mentally impaired or disabled, experienced extreme childhood trauma and abuse, or were of questionable guilt.** An examination of the 2015 cases that resulted in execution reveal a disturbing pattern: It's frequently not just one impairment, such as a low IQ score, that defines these cases, but rather multiple forms of disability and impairment.

"To impose the harshest of punishments on an intellectually disabled person violates his or her inherent dignity as a human being."

—JUSTICE ANTHONY KENNEDY



SEVEN PEOPLE HAD AN INTELLECTUAL IMPAIRMENT OR BRAIN INJURY

Georgia executed Warren Hill, a man with a **70 IQ score**, even though three state-employed physicians found that he was intellectually disabled.

Texas executed Juan Garcia, who had a **75 IQ score** and was just 18 when he was sentenced to die.

Missouri executed Cecil Clayton, who had a **71 IQ score and lost 20% of his prefrontal cortex**—the part of the brain responsible for decision-making—in a sawmill accident. Three doctors declared Clayton incompetent to be executed.

Texas executed Robert Charles Ladd, who had a **67 IQ score, which put him in the lowest 4 percent of Americans.** A state-employed psychiatrist said Ladd was "rather obviously retarded."



FIVE PEOPLE ENDURED EXTREME CHILDHOOD TRAUMA

One clinical forensic psychologist diagnosed Walter Storey, executed in Missouri, with post-traumatic stress disorder following a childhood rife with severe abuse.

Walter Storey's stepfather beat him with belts, switches, tree limbs, electrical cords and his fists. He once placed him in a nest of fire ants. He also taped the child's hands to his crib and taped his mouth shut. He also forced Walter and his brother to box each other until they were both bleeding and crying.



TWO PEOPLE WERE POTENTIALLY INNOCENT

Lester Bowers, executed in Texas, steadfastly maintained his innocence. Prosecutors failed to disclose a tip that the murders were connected to drug dealing in the area. After Bowers' conviction, a witness came forward to reveal that her boyfriend had admitted to killing the men in a drug deal gone wrong.

Georgia executed Brian Keith Terrell by lethal injection that took over an hour to administer as he winced in pain. His case was rife with doubt. Terrell's cousin was given a plea deal in exchange for testifying against him. He later said he was pressured to do so by police. Another witness said that she did not see Terrell at the crime scene even though prosecutors presented this information at trial. Terrell's final words: "didn't do it."

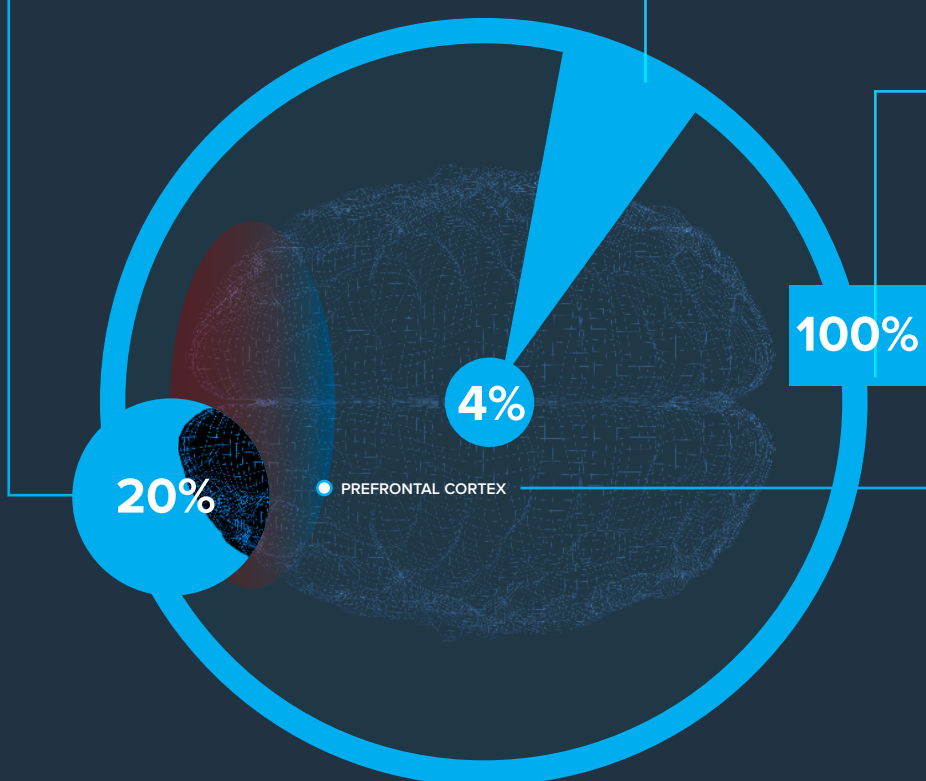


SEVEN PEOPLE SUFFERED FROM SERIOUS MENTAL ILLNESSES

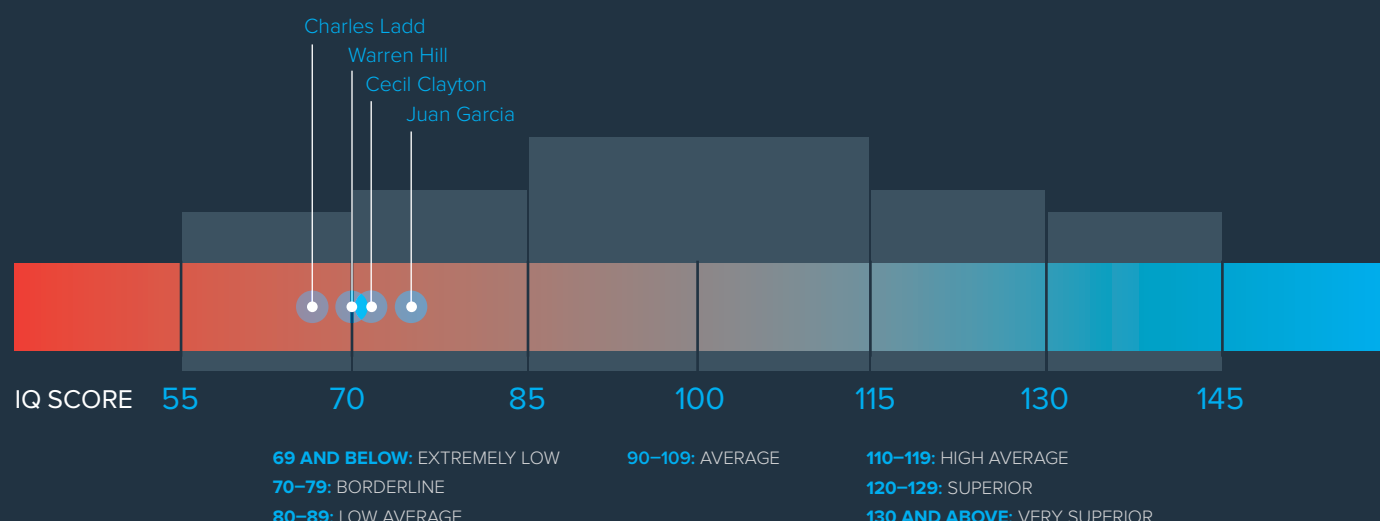
Georgia executed Andrew Brannan, a decorated Vietnam combat veteran, diagnosed with both post-traumatic stress disorder and bipolar disorder. The Department of Veteran Affairs categorized him as **100% disabled.**

Kent Sprouse had been diagnosed with schizophrenia by a court-appointed psychiatrist who said he was "**psychotic, paranoid, believed people were persecuting him, and did not understand the wrongfulness of his conduct.**"

Texas executed Raphael Holiday, who was diagnosed with **depression with psychotic features.** A physician testified that his mental health background suggested psychotic decompensation, which meant that he had "some loss of contact with reality."



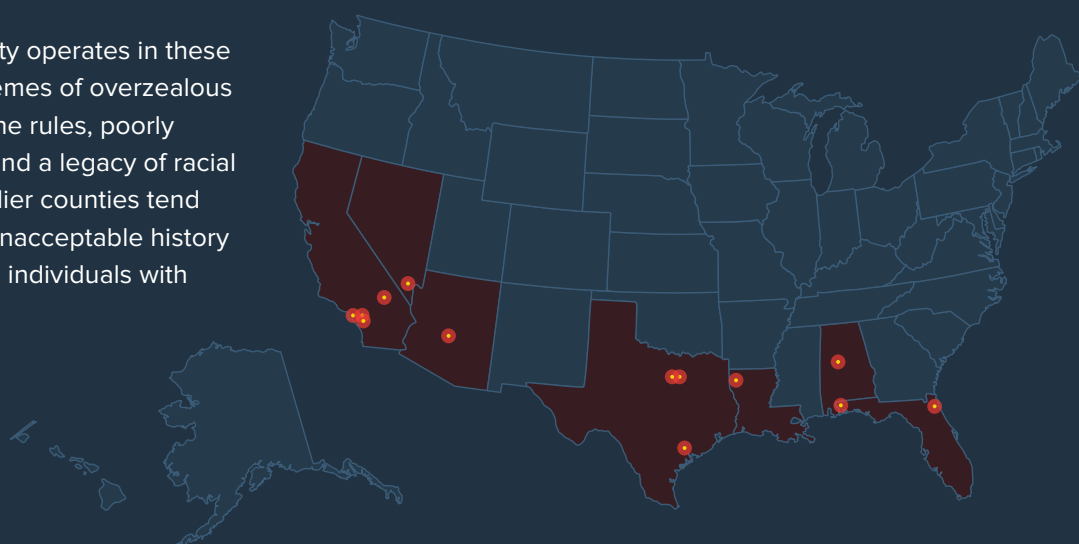
A DISTURBING PATTERN OF EXECUTING THE SEVERELY INTELLECTUALLY IMPAIRED AND MENTALLY DISABLED



ONLY A HANDFUL OF OUTLIER COUNTIES STILL IMPOSE THE DEATH PENALTY

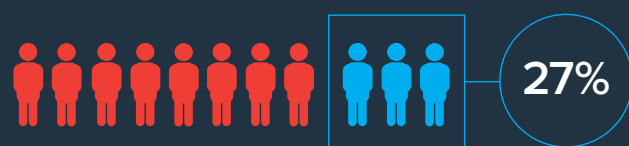
Americans returned 49 new death sentences in 2015, the lowest number in modern history. Yet, as the nation moves away from the death penalty, a handful of outlier counties continue to impose death sentences. Nationwide, in the six-year period between 2010 and 2015, only 10 counties imposed six or more death sentences.

A look at how the death penalty operates in these outlier jurisdictions reveals themes of overzealous prosecutors who often bend the rules, poorly performing defense lawyers, and a legacy of racial bias. Unsurprisingly, these outlier counties tend to share common results: an unacceptable history of convicting the innocent and individuals with crippling mental impairments.



OVERZEALOUS PROSECUTORS

Prosecutors wield incredible power in the U.S. legal system. Their discretion is the difference between life and death. Outlier counties are frequently the result of prosecutors who misuse their discretion and, in some cases, engage in misconduct.



Duval County prosecutor, Bernie De la Rionda, has personally obtained 11 death sentences since 2008, far more than any other prosecutor in Florida. **The Florida Supreme Court reversed three, or 27%, of his death penalty cases;** one for law enforcement misconduct and two after concluding that death was too severe of a punishment.

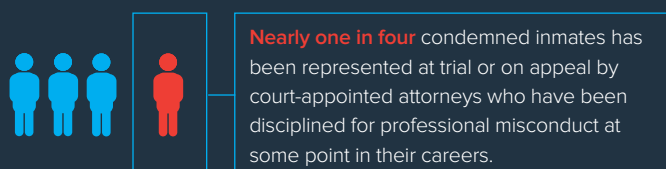
Orange County, California. A judge recused the entire Orange County District Attorney's Office from a capital trial this year because of extensive misconduct. Recently, three dozen former prosecutors, legal scholars, and organizations called on the Department of Justice to investigate the office.

Duval County, Florida. In 2015, prosecutor Bernie de la Rionda obtained a death sentence, with a split jury decision of eight to four, against a man with post-traumatic stress disorder who was sexually abused as a child and stabbed when he was three years-old.

Riverside County, California. In 2015, Riverside County produced eight death sentences, more than any other county in America, and more than Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas and Virginia combined. Earlier this year, Judge Alex Kozinski asked whether Attorney General Kamala Harris wanted to defend a conviction "obtained by lying prosecutors." The court reversed the conviction due to flagrant prosecutorial misconduct.

INEFFECTIVE DEFENSE LAWYERS

A competent defense lawyer is a crucial component of our legal system. Outlier death penalty counties are rife with poorly performing lawyers who rarely give the jury a reason to save the defendant's life.



Nearly one in four condemned inmates has been represented at trial or on appeal by court-appointed attorneys who have been disciplined for professional misconduct at some point in their careers.

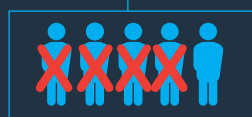
Maricopa County, Arizona. Randall Craig was the defense lawyer in two out of three cases resulting in death sentences in 2015. Five of his former clients are on death row. A typical trial might have upwards of a dozen mitigation witnesses and last weeks or months. In contrast, several of Craig's cases involved zero or one mitigation witness. A judge once had to remove Craig from a case after he claimed his heavy caseload prevented him from working more than two hours a day on it. In another case, Craig went nine months without visiting a client who was facing the death penalty.

Duval County, Florida. Refik Eler has been a defense lawyer on at least eight cases that resulted in a death sentence since 2008, more than any other lawyer in Florida. In 2015, a Florida court overturned a conviction and death sentence after finding that Eler failed to conduct a basic factual investigation of the circumstances of the crime, failed to secure the testimony of alibi witnesses, and also failed to investigate evidence of his client's organic brain damage and intellectual disability. Courts have found that Eler provided ineffective assistance of counsel in three different capital cases.

RACIAL BIAS

Racial bias frequently taints the entire criminal justice process in outlier counties. Today, the death penalty is more frequently used when the victim is white than when the victim is Black. In some states, like Louisiana, no white person has ever been executed for the murder of a Black man.

A report from the Equal Justice Initiative of Alabama found that Houston County prosecutors used four-fifths of their jury selection challenges in death penalty cases to remove Black jurors.



Clark County, Nevada. In a 2015 oral argument at the Nevada Supreme Court, one of the justices interrupted the prosecutor to criticize the striking of potential jurors, noting: "I just don't understand knocking these two black women off ... You are so afraid of losing that you knock off African Americans consistently." Last year, in *Connor v. State*, the Nevada Supreme Court reversed a conviction in a capital case based on the prosecution's discriminatory jury selection.

Harris County, Texas. Texas executed Juan Garcia from Harris County in 2015. An expert testified in Garcia's case that "race plays a role in that among dangerous people, minority people are overrepresented in this population." He also commented that race is a potential factor in determining a person's future dangerousness.

Houston County, Alabama. In December 2015, the police chief for the city of Dohan in Houston County acknowledged his membership in the Sons of the Confederacy. As reported in the Washington Post, the police chief acknowledged that he named "his own son after Nathan Bedford Forrest, the first 'grand wizard' of the Ku Klux Klan." Alabama courts have reversed three death sentences from Houston County since 2010.

EXONERATIONS

A 2014 study by a University of Michigan professor offered a conservative estimate that if all death row prisoners remained under sentence of death indefinitely, at least 4.1% would eventually be exonerated. This is perhaps the greatest injustice of this broken system and it is evident in the outlier counties.

Four out of seven death row exonerations in 2015 came from these outlier counties:

Jefferson County, Alabama. In 2015, both Montez Spradley and Anthony Ray Hinton were exonerated from death row in two unrelated Jefferson County cases.

Maricopa County, Arizona. Debra Milke was exonerated in 2015 after 22 years on death row.

Harris County, Texas. In June 2015, Harris County prosecutors dismissed all charges against Alfred Dewayne Brown, a man who spent more than 10 years on death row.