

Lesson 6

Racial discrimination and the death penalty

Materials:

- Lesson 6 Handout
- “US Constitution and Racial Discrimination”
- “The Death Penalty in Georgia: Racist, Arbitrary, and Unfair”

Time: 1 class period

Overview:

Objective: Students will become familiar with the role that race plays in death penalty cases.

Procedure:

1. Handout the “Lesson 6 Handout”, “US Constitution and Racial Discrimination,” and “The Death Penalty in Georgia: Racist, Arbitrary, and Unfair”. Allow students time to read the documents.
2. Ask students to take out a piece of paper and tell students to finish this sentence:
“When I think of racism, I think of...”
3. Discuss the following questions.
 - a. What does racism mean to you? What past thoughts, feelings, or experiences contributed to your present perspective on racism?
 - b. How does racism violate your human rights?
 - c. What are some causes of racism?
 - d. How do stereotypes contribute to racism?
 - e. How does racism affect the community? How does it affect the individual?
 - f. Have you ever witnessed racism? If you feel comfortable, relate the story to the class.
 - g. Although some people look to their race as being a part of their identity, some people identify with their religion or nationality, and still others identify with their ethnicity or sexual orientation. Is racism different from other forms of discrimination, such as homophobia? What role does identity have in discrimination and racism?
 - h. Is there a solution for racism and discrimination in the criminal justice system?
 - i. What are examples of racism in a systemic context?
 - j. How did race-based prejudice affect the case of Wilburn Dobbs?
4. Have students trade their ‘sentence finishing exercises’ and have them comment on one another’s. Tell each student to write his or her own thoughts about the other person’s sentence finishing exercise and allow each pair of students 5 minutes to explain their differing or similar view to each other.

Homework:

Ask students to read the Preamble of the Convention on Racism in detail. Tell them to summarize or paraphrase each paragraph and then comment on it. For example, a comment on paragraph 1 would be noting that the entire Convention is written within the context of human rights.

Lesson 6 Handout

In 1972 the US Supreme Court recognized the unconstitutionality of racial discrimination in the use of the death penalty, and invalidated every state death penalty statute. Execution nonetheless resumed in 1977, after the Supreme Court deemed that several new statutes would guarantee the constitutionality of capital punishment. Nevertheless, racial discrimination in the administration of the death penalty was far from over.

- Since 1977, 81% of all death row inmates were executed for killing whites,ⁱ even though government statistics show that blacks constituted 46.6% of homicide victims between 1976 and 1999. Moreover, government statistics show that interracial murders are relatively rare, as 86% of white homicide victims were killed by whites, and 94% of black homicide victims were killed by blacks.ⁱⁱ Blacks convicted of killing whites are far more likely than any other category of offender to receive a death sentence.
- Research by the General Accounting Office has confirmed the results of numerous studies, which found that murderers of white victims are more likely to receive the death penalty than murderers of black victims.ⁱⁱⁱ African-Americans represent only 12% of the US population but account for 46% of death row prisoners.^{iv}
- Bias in the US criminal justice system has created a situation where blacks murdering whites are far more likely to be executed than whites murdering blacks, while black-on-black is often handled with lack of rigor by prosecutors and law enforcement authorities.
- Prosecutors, jurors, and judges who seek the death penalty as a punishment are overwhelmingly white.^v Furthermore, executions come at the expense of great personal discretion, as statutory justifications hinge upon different standards for each state and the likelihood of a death sentence for identical crimes fluctuates between adjacent communities with comparable crime rates for no other reason than the attitudes of the local prosecutors.^{vi}

In Kentucky, for example, 1,000 African Americans have been murdered since the reinstatement of the death penalty in 1975, however, as of spring 1999, all of the state's death row inmates were sentenced for murdering white victims, none for murdering a black person,^{vii} in a clear violation of the civil rights guaranteed by the Sixth and Fourteenth Amendments to the US Constitution, which respectively protect citizens from bias in criminal proceedings and discrimination.

ⁱ <http://www.deathpenaltyinfo.org/dpicrace.html#inmaterace>

ⁱⁱ Bureau of Justice Statistics - <http://www.ojp.usdoj.gov/bjs/homicide/race.htm>

ⁱⁱⁱ <http://161.203.16.4/t2pbat11/140845.pdf>

^{iv} <http://www.deathpenaltyinfo.org/dpicrace.html#inmaterace>

^v <http://www.aclu.org/library/DeathPenalty.pdf>

^{vi} <http://www.amnestyusa.org/abolish/racialprejudices.html>

^{vii} <http://www.aclu.org/library/DeathPenalty.pdf>

The US Constitution and Racial Discrimination

The Sixth and the Fourteenth Amendments to the US Constitution offer protection against racial discrimination in criminal cases

Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Fourteenth Amendment:

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of the laws.

The Death Penalty in Georgia: Racist, Arbitrary and Unfair
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www.amnesty.org/library/index/engAMR510251996

The case of Wilburn Dobbs

Wilburn Dobbs, black, was sentenced to death in 1974 after a trial contaminated by racism. He was tried and found guilty of the murder of Roy Sizemore, white, during a robbery in December 1973. The offence occurred in the small, racially segregated community of Walker County, Georgia, which has a 96% white population. The trial started 12 days after Dobbs was indicted and only three days after the state announced it would seek the death penalty. At the trial, Dobbs was represented by a state-appointed attorney, who, on the morning of the trial, sought a delay stating that he was not prepared to go to trial and was in a better position to prosecute the case than defend it. The motion was denied and the trial went ahead.

During the trial Dobbs was referred to as colored and colored boy by the judge and defense attorney, and called by his first name by the prosecutor. Two of the jurors who sentenced Dobbs to death for the murder admitted after the trial to using the racial slur nigger. Two female members of the jury stated that they feared blacks and found them to be scarier than whites. Another juror stated: I would fear one [a black man] on the street...I think all white women would have that fear.

The trial judge, Judge Coker, formerly served in the Georgia House of Representatives and Georgia Senate from 1953 to 1963. During that time he participated with other members of the legislature in an effort to prevent racial integration. Judge Coker presided over four cases in which the death penalty was sought. All of the victims were white, with two of the cases involving white defendants and two black defendants. Both cases involving white defendants resulted in life sentences and both cases involving black defendants received death sentences.

At the penalty phase (A capital trial is divided into two phases. If the defendant is found guilty the trial continues into the penalty phase. During the penalty phase the defense attorney can present mitigating evidence as to why the jury should not recommend a sentence of death to the judge.) of the trial, the defense attorney presented no mitigating evidence as to why Dobbs should be spared the death penalty. His only argument was to indirectly suggest that a death sentence would not be carried out. At no time did he refer to Dobbs by name or even request that the jury return a verdict of life imprisonment. His final words to the jury were I only ask that in considering the punishment, that you inflict one that you feel you can live with. The jury were left unaware of the many mitigating factors in Dobbs life. For example, Dobbs mother was 12-years-old when she gave birth to him and he never knew his father, who died shortly afterwards. Dobbs started life in a home environment which included alcohol consumption, prostitution and association with a criminal element. Dobbs was eventually removed from his home by his grandmother and placed with a relative. Members of the black community Dobbs grew up in were denied the opportunity to speak for a sentence of life imprisonment by the defense attorney's lack of investigation into possible mitigating evidence.

After 25 minutes of deliberation over the sentence, the jury asked the judge a question concerning Dobbs eligibility for parole. The judge refused to answer the question. In less than an hour the jury returned a death sentence.

When describing the attitude of the defense lawyer towards blacks, the Federal District Court stated:

Dobbs trial attorney was outspoken about his views. He said that many blacks are uneducated and would not make good teachers, but do make good basketball players. He opined that blacks are less educated and less intelligent than whites because of their nature or because my granddaddy had slaves. He said that integration has led to deteriorating neighborhoods and schools and referred to the black community in Chattanooga as black boy jungle. He strongly implied that blacks have inferior morals by relating a story about sex in the classroom...

The attorney stated that he uses the word nigger jokingly.

The federal court determined that the racial prejudice of the judge, prosecutor, defense lawyer and jurors in the case did not require that the death sentence be set aside. The Court of Appeals found that although certain of jurors statements revealed racial prejudice, no juror stated that [he or she] viewed blacks as more prone to violence than whites. Since neither the trial judge nor defense lawyer decided the penalty, the Court held that apart from the trial judges and defense lawyers references to Dobbs as colored or colored boy, it cannot be said that the judges or the defense lawyers racial attitudes affected the jurors sentencing determination. After a reprimand from the US Supreme Court, the Federal District Court again held that Dobbs did not receive incompetent representation despite his lawyer's racism.

Wilburn Dobbs remains on death row. In at least five capital cases in Georgia the accused were referred to with racial slurs by their own lawyers at some time during the court proceedings. A court-appointed lawyers only reference to his client during the penalty phase of a Georgia capital case was: You have got a little ole nigger man over there that doesn't weigh over 135 pounds. He is poor and he is broke. Hes got an appointed lawyer...He is ignorant. I will venture to say he has an IQ of not over 80. The defendant was sentenced to death.

[...]

Racial bias in the selection of jurors

The jury selection process, known as the *voir dire*, is commonly used in a racially biased manner in Georgia. In 1986, in the case of *Batson v. Kentucky* where , the US Supreme Court ruled that it was unconstitutional for prosecutors to remove potential jurors from the jury on grounds of race. However, on numerous occasions defendants in capital cases have been tried by juries not composed of a cross-section of the community.

Six of the 12 blacks executed in Georgia since 1983 were convicted and sentenced by all-white juries after prosecutors had removed all potential black jurors.

An attorney researching an unrelated civil case, came across a memorandum from the then District Attorney of Ocmulgee judicial district, Joseph Briley, asking the Putnam County jury commissioners precisely how many blacks and women they should add to the list of potential jurors. The purpose of the memorandum appeared to be to make the jury lists representative enough to avoid challenges from defense lawyers but not fully representative of the population. Briley admitted giving the jury commissioners the number of names needed to make the lists acceptable but denied there was any intention to discriminate. In the capital cases tried by Briley in which the defendant was black and the victim white, Briley used 94% - 96 out of 103 - of his jury challenges to remove black jurors. On 13 July 1995 Joseph Briley was quoted in the *Macon Telegraph* as stating: ...I recognize the fact that it [the death penalty] cannot be equally applied in our system. That's not to say it's unfair.

Racial bias in seeking the death penalty

Georgia's death penalty statutes were rewritten following the 1972 US Supreme Court *Furman* decision. For the death penalty to be constitutional, states had to specify criteria for when district attorneys should seek a death sentence. Georgia's death penalty statute specifies 10 aggravating factors that would allow a district attorney to class a murder as capital. The 10 aggravating factors included in the statute would allow for most murders to be classed as capital. For example, if the murder could be described as wantonly vile, horrible or inhuman or that the murder was committed for the purpose of receiving money. This leaves a district attorney with almost unlimited discretion to decide whether to class a murder as capital. There are wide numerical discrepancies between how often different judicial circuits seek the death penalty; the most death sentences were sought by the judicial circuit of Stone Mountain - 86 between 1973 and 1995. During the same period the Appalachian judicial circuit only sought the death penalty twice.

[...]

The death penalty in Georgia is primarily sought against those accused of murdering people deemed more valuable by society; this may be by virtue of their social and economic standing, or their race. A study of capital cases brought before the courts in the judicial district of Chattahoochee, Georgia between 1973 and 1990 showed that 85% of defendants were accused of the murder of a white; in the same district blacks made up 65% of murder victims during the same period. Six percent of the capital trials involved a black-on-black murder. The death penalty was never sought for the murder of a black by a white during the 27 years covered by the study.

A statistical study of the use of the death penalty in the judicial district of Flint, Georgia (Compiled by Professor Mike Radelet, Florida University, for use in the appeals of death row inmate Carzell Moore.), showed that the death penalty is sought six times more often if the victim is white. The death penalty had been sought in six of the 13 cases involving the murder of a white woman but had never been sought in the 11 cases involving the murder of a black woman.

The legal authorities continue to deny that the death penalty is used in a racially discriminating manner in Georgia. In July 1995, an Assistant Attorney General stated: I don't think we have a racist problem statewide. We're all human. People are not perfect, but we have too many checks and balances in the system that help reduce bias (Quoted in The Macon Telegraph 13 July 1995. (emphasis added).

On occasion, legal officials have refused to recognize that racial bias could interfere with the judicial process. During a 1990 legal hearing for William Brooks, black, on whether racial bias affected his original trial, defense attorneys questioned the district attorney on the lack of participation by ethnic minorities in the legal process: ...these five black men were all tried by all-white juries and defended by white lawyers, prosecuted by white lawyers, and tried by white judges. Does that offend your sense of justice? After further discussion on the issue the judge asked "What does my sense of justice have to do with it?" (Source: transcript of pre-trial hearings in *State v. William Anthony Brooks*.)

District attorneys often take into account the views of the relatives of white victims on whether to seek the death penalty against the defendant. The relatives of black victims may not be so privileged. The families of the victims of William Hance were not consulted on the possible sentences available. The district attorney who prosecuted Hance testified: I talked with, in most [death penalty] cases, the families of the victims...I'm sure that I talked to them in all...except for Hance...There was really no family to talk with... The district attorneys file on the victims told a different story; it contained the phone number and address of the mother of one of the victims. Had he contacted the victim's relatives he would have found them opposed to the execution of William Hance. Several family members of the victims submitted affidavits to the Georgia Board

of Pardons and Paroles requesting that Hance not to be executed.

The district attorney responsible for seeking the death penalty against William Hance tried seven other capital cases during his tenure. The Hance case was the only one involving black victims; it was also the only one in which the views of the victim's relatives were not sought.

The family of Brooks victim were consulted and informed about legal proceedings. After a retrial was ordered by an appeal court, the district attorney called a press conference where he announced that, after consultation with the victim's family, he would again be seeking the death penalty. In 1982 Brooks father was murdered; the district attorneys office had no contact with the Brooks family. At a legal hearing held before Brooks retrial, relatives of three black murder victims (a husband, wife and father) gave testimony about their experiences with the district attorneys office after the murder of their loved-one; none of the three had been consulted by the district attorneys office or been informed about the progress of the case against those accused of the murder of their relatives.