

Women and the Death Penalty: Racial Disparities and Differences

Harry Greenlee

Shelia P. Greenlee

Repository Citation

Harry Greenlee and Shelia P. Greenlee, *Women and the Death Penalty: Racial Disparities and Differences*, 14 Wm. & Mary J. Women & L. 319 (2008), <http://scholarship.law.wm.edu/wmjowl/vol14/iss2/7>

WOMEN AND THE DEATH PENALTY: RACIAL DISPARITIES AND DIFFERENCES

HARRY GREENLEE, ESQ.*
SHELIA P. GREENLEE, PH.D.**

ABSTRACT

The death penalty in America has been studied, discussed, and written about extensively. The vast majority of researchers, however, have focused their study of the death penalty, or capital punishment, on male prisoners. This article examines the data related to women on death row since 1973, with particular attention to similar problems that have been documented for men, while highlighting racial differences and/or racial disparities where found. The subjects were 157 women who received death row sentences, forty-nine women currently on death row, and the eleven women executed since 1973. The data demonstrated that some racial disparities do exist with regard to women receiving death row sentences. However, definitive conclusions explaining why these differences exist are speculative due to the relatively small number of females receiving the death penalty.

INTRODUCTION

I. SUBJECTS AND METHODS

- A. *Female Offenders by Status and Race*
- B. *Sentencing Jurisdiction/Geography (Regions) by Race*
- C. *Additional Racial Differences*
- D. *Justice System Decision Makers*
- E. *Inadequate Defense Counsel*

II. RESULTS AND DISCUSSIONS

CONCLUSION

INTRODUCTION

The death penalty in America has been studied, discussed, and written about extensively.¹ The topic has been a part of the American

* Chair, Department of Government, Christopher Newport University. Harry Greenlee received his law degree from the Ohio State University.

** Chair, Department of Psychology, Christopher Newport University. Shelia Greenlee received her Ph.D. in Developmental Psychology from the Ohio State University.

1. AMERICAN CIVIL LIBERTIES UNION, *THE FORGOTTEN POPULATION: A LOOK AT DEATH ROW IN THE UNITED STATES THROUGH THE EXPERIENCES OF WOMEN 1* (Dec. 2004), available at <http://www.aclu.org/FilesPDFs/womenondeathrow.pdf> [hereinafter *ACLU, THE FORGOTTEN POPULATION*].

landscape since the early days of the colonial settlements in the 1600s, with the first legal execution occurring in 1608, and the first execution of a woman in 1632.² Even though the death penalty has been used as a form of punishment for close to 400 years, with a total of 20,000 executions, 568 of which were women, it has not been without controversy.³ In the 1970s, the death penalty came under its greatest degree of legal scrutiny, culminating in the 1972 United States Supreme Court case of *Furman v. Georgia*.⁴ In *Furman v. Georgia*, the Supreme Court held that the death penalty violated the Eighth Amendment as a form of cruel and unusual punishment.⁵ Further, the U.S. Supreme Court ruled that, as it was being administered at the time, the sentencing process in capital punishment cases was arbitrary and capricious.⁶ As a result, 120 cases before the court and 645 other cases were vacated.⁷ The ensuing series of constitutional challenges created an almost ten year moratorium on executions, lasting from 1968 to 1977.⁸ Four years later, in *Gregg v. Georgia*, the Court held that capital punishment was constitutional, provided that states instituted procedural safeguards to guide sentencing discretion.⁹

The Court's ruling in *Gregg* once again reignited the controversy surrounding the death penalty.¹⁰ Following the ruling in *Gregg*, more research was published showing, among other things, that the death penalty did not deter crime, was very expensive, and through DNA testing, many death row inmates were proven innocent.¹¹ Also, a number of researchers and advocate groups attacked the death penalty as being racially biased.¹² The American Civil Liberties Union (ACLU),

2. David V. Baker, *A Descriptive Profile and Socio-Historical Analysis of Female Executions in the United States: 1632-1997*, 10 *WOMEN & CRIM. JUST.* 57, 60 (1999).

3. VICTOR L. STREIB, *DEATH PENALTY FOR FEMALE OFFENDERS*, JANUARY 1, 1973, THROUGH JUNE 30, 2007, at 6 (July 13, 2007), available at <http://www.deathpenaltyinfo.org/FemDeathJune2007.pdf>. For this article, the first page of the Streib report, the title page, is considered page one for citation purposes.

4. Baker, *supra* note 2, at 78-79.

5. *Furman v. Georgia*, 408 U.S. 238, 239-40 (1972) (per curiam).

6. See Baker, *supra* note 2, at 78-79.

7. *Id.* at 79.

8. *Id.*

9. *Gregg v. Georgia*, 428 U.S. 153, 187, 195 (1976); see also Baker, *supra* note 2, at 79.

10. See Baker, *supra* note 2, at 79.

11. See AMERICAN CIVIL LIBERTIES UNION, NATIONAL DEATH PENALTY FACT SHEET: DEATH PENALTY 101, at 2 (Mar. 2007), available at http://www.aclu.org/images/asset_upload_file758_29292.pdf [hereinafter ACLU, NATIONAL DEATH PENALTY FACT SHEET]; see also American Civil Liberties Union, DNA Testing and the Death Penalty (June 26, 2002), <http://www.aclu.org/capital/innocence/10392pub20020626.html> (last visited Jan. 3, 2008) [hereinafter ACLU, DNA Testing and the Death Penalty].

12. Amnesty International USA, The Death Penalty is Racially Biased, http://www.amnestyusa.org/Fact_Sheets/The_Death_Penalty_is_Racially_Biased/page.do?id=1101091&n1=3&n2=28&n3=99 (last visited Jan. 15, 2008) (citing federal and state studies);

Amnesty International, and numerous state investigatory commissions asserted the racial bias in the death penalty sentences suggested that the race of the victim and/or offender influenced who received the death penalty.¹³ These groups and state commissions have consistently argued that African Americans and people of color are more likely to receive the death penalty than whites.¹⁴

The vast majority of researchers have focused their study of the death penalty, or capital punishment, as it is imposed on male prisoners.¹⁵ Even though women comprise over 50% of the American population,¹⁶ they commit far fewer capital offenses than men.¹⁷ Some scholars argue that the lack of research on women is actually due to the sparseness of female offenders in the criminal justice system.¹⁸ Others assert that the lack of women in the criminal justice system, particularly on death row, is due to the fact that "women are more likely to be dropped out of the system the further the capital punishment system progresses."¹⁹ These findings are clearly supported by data collected by Victor Streib in an extensive study regarding the imposition of the death penalty on female offenders from January 1, 1973 to June 30, 2007.²⁰ Streib reviewed the data for women offenders who were arrested for murder and found that women account for 10% of murder arrests, 2% of death sentences determined at the trial level, and 1.4% of persons on death row, although only 1.1% of women were executed.²¹ Whatever the explanation for the lack of research about female offenders, research remains sparse on the death penalty and female offenders.²²

ACLU, NATIONAL DEATH PENALTY FACT SHEET, *supra* note 11, at 2.

13. *See supra* note 12 and accompanying text.

14. *E.g.*, American Civil Liberties Union, Race and the Death Penalty (Feb. 26, 2003), <http://www.ACLU.org/capital/unequal/10389pub20030226.html> (last visited Jan. 3, 2008) [hereinafter ACLU, Race and the Death Penalty]; *see also* Amnesty International USA, *supra* note 12.

15. Kathryn Ann Farr, *Aggravating and Differentiating Factors in the Cases of White and Minority Women on Death Row*, 43 CRIME & DELINQ. 260, 260 (1997); *see also* ACLU, THE FORGOTTEN POPULATION, *supra* note 1, at 1.

16. DENISE L. SMITH & RENEE SPRAGGINS, U.S. CENSUS BUREAU, U.S. DEPT OF COMMERCE, GENDER 2000: CENSUS 2000 BRIEF 1 (Sept. 2001), available at <http://www.census.gov/prod/2001pubs/c2kbr01-9.pdf>.

17. *See Baker, supra* note 2, at 79-80; *see also* STREIB, *supra* note 3, at 2.

18. *See, e.g.*, Farr, *supra* note 15, at 260; ACLU, THE FORGOTTEN POPULATION, *supra* note 1, at 1; *see generally* Elizabeth Rapaport, *The Death Penalty and Gender Discrimination*, 25 L. & SOC'Y REV. 367 (1991) (exploring why fewer women than men are sentenced to capital punishment).

19. Death Penalty Info. Ctr., Women and the Death Penalty, <http://www.deathpenaltyinfo.org/article.php?did=230&scid=24> (last visited Jan. 3, 2008) [hereinafter DPIC, Women and the Death Penalty].

20. *See* STREIB, *supra* note 3.

21. *Id.* at 3.

22. *See* ACLU, THE FORGOTTEN POPULATION, *supra* note 1, at 1.

The Forgotten Population (2004), a project produced by three programs of the American Civil Liberties Union (ACLU) between April 2002 and December 2003,²³ found that the problems women experience in the judicial system are similar to the problems men on death row suffer.²⁴ For example, inadequate defense counsel, official misconduct, poverty, alcoholism, drug abuse, and domestic violence are common problems for women in prison.²⁵ This paper will examine the data related to women on death row since 1973, with particular attention to similar problems that have been documented for men, while highlighting racial differences and/or racial disparities, where found. Data for this report was extracted from Streib's report on Death Penalty for Female Offenders,²⁶ the Death Penalty Information Center,²⁷ and an NAACP Legal Defense Fund Report.²⁸

I. SUBJECTS AND METHODS

The 2007 Streib report was the major source of data for this article. The subjects are the 157 women who have received death row sentences,²⁹ the forty-nine women currently on death row,³⁰ and the eleven women who have been executed since 1973.³¹ Based on this data, death sentences for female offenders constituted approximately 2% of all death sentences during this time period.³²

II. RESULTS AND DISCUSSION

A. Female Offenders by Status and Race

Table 1 of this article presents data on the 157 female offenders receiving death row sentences by race and status of the offender.³³ Of the female offenders with death row sentences, 64.3% were Caucasian, 26.8% were African American, 6.4% were Latina, and 2.5%

23. *Id.*

24. *Id.* at 1-3.

25. *Id.*

26. STREIB, *supra* note 3.

27. DPIC., *Women and the Death Penalty*, *supra* note 19.

28. CRIMINAL JUSTICE PROJECT, NAACP LEGAL DEFENSE AND EDUCATION FUND, INC., *DEATH ROW U.S.A.* (Spring 2005), available at http://www.naacpldf.org/content/pdf/pubs/drusa/DRUSA_Spring_2005.pdf.

29. STREIB, *supra* note 3, at 11-16. Streib in his narrative reported that 160 death row sentences have been imposed upon female offenders from 1973 through June 2006. *Id.* at 3. However, a review of Appendix A data revealed only 157 females received death row sentences, including one from a federal jurisdiction. *Id.* at 11-16.

30. *Id.* at 9.

31. *Id.* at 9 tbl.4.

32. *Id.* at 3.

33. See *infra* Table 1 at p. 333 (compiling data from the Streib report, *supra* note 3).

were Native American.³⁴ No Asian American women were listed as receiving death sentences.³⁵ These percentages are reasonably consistent with their level of racial representation in the female population.³⁶ There is, however, a disparity as it relates to African American and Native American females receiving death sentences.³⁷ The percentage of women of every race receiving death sentences is less than their percentage in the female population, except for African American and Native American women.³⁸ The percentage of African American and Native American females receiving death sentences is more than double their percentage of the U.S. female population.³⁹ Interestingly, this finding is not true for the other women of color.⁴⁰ In fact, while Asian American women are roughly 3.7% of the female population,⁴¹ no Asian American women have ever received death sentences.⁴²

The data also reveals some racial differences within each sentencing status.⁴³ In general, the data shows that while women of color represent 36% of the population of women receiving death row sentences, they are more likely to receive commuted and/or reversed sentences.⁴⁴ Caucasian women are granted commuted and/or reversed sentences approximately in the same proportion as they are represented in the total population of death-sentenced women.⁴⁵ Although Caucasian female offenders receive commuted and/or reversed sentences at a rate proportionate to their representation in the total population of female offenders receiving death sentences (64%),⁴⁶ their execution rate is definitively higher than other racial groups (82%).⁴⁷ Only two women of color, both African American, have been executed.⁴⁸ Comparatively speaking, African American women were executed at a much lower percentage (18%) than their percentage

34. *Id.*

35. *See id.*

36. *See* OFFICE ON WOMEN'S HEALTH, U.S. DEP'T OF HEALTH & HUM. SERV., THE HEALTH OF MINORITY WOMEN 2 (July 2003), available at <http://www.womenshealth.gov/owh/pub/minority/minority.pdf> (demonstrating that the female population is comprised of 70% Caucasian, 12.7% African American, 12.5% Latina, 3.7% Asian American and 0.87% Native American).

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *See infra* Table 1 at p. 333.

43. *Id.*

44. *Id.* (compiling all non-white totals from row 5 equals 35.7%).

45. *Id.*

46. *Id.*

47. *Id.* (demonstrating that the percentage derived from the nine Caucasians executed compared to the total eleven women executed is approximately 82%).

48. *Id.*

of the total population of female offenders receiving death sentences (26.8%).⁴⁹ One must exercise great caution in interpreting these findings, considering there is an extremely small sample of women of color on death row and even fewer being executed.⁵⁰ Also, some of the data may be skewed as some of the women on death row are represented multiple times in the sample of women receiving death row sentences.⁵¹ For example, offenders Debra Brown, Leslie Nelson, Doris Foster, Kimberly McCarthy, and Pamela Perillo are each represented more than once in the population of women receiving death sentences.⁵²

B. Sentencing Jurisdiction/Geography (Regions) by Race

The death penalty has been used in thirty-eight states/jurisdictions, excluding the military and federal government.⁵³ Table 2 of Streib's report presents interesting data on the jurisdictions/geographic location of women receiving death row sentences by race.⁵⁴ The table demonstrates that, in the modern era, the states that have sentenced women to death most frequently are California (eighteen women), Texas (eighteen women), North Carolina (sixteen women), Florida (twelve women), Ohio (eleven women) and Alabama (ten women).⁵⁵ A close examination of this data reveals that four of the six jurisdictions that most often sentence women to death are in the South.⁵⁶ Each of the six jurisdictions has significant minority populations.⁵⁷

A review of Table 2 of this article reveals that the southern region of the United States accounted for more than half (59.2%) of all of the women receiving death sentences.⁵⁸ Relatively speaking, the percentage of women receiving death sentences from the southern

49. *Id.*

50. *Id.* (demonstrating that out of the 157 women, only fifty-six women were of color).

51. STREIB, *supra* note 3, at 11-16.

52. *Id.*

53. Death Penalty Information Center, Executions by State: Death Penalty in the United States of America, <http://www.deathpenaltyinfo.org/executionmap.gif> (last visited Jan. 3, 2008) [hereinafter DPIC, Executions by State].

54. *See infra* Table 2 at p. 333 (compiling data from the Streib report, *supra* note 3).

55. STREIB, *supra* note 3, at 4 tbl.2.

56. *Compare* DPIC, Executions by State, *supra* note 53, with STREIB, *supra* note 3, at 5 tbl.2.

57. U.S. Census Bureau, Table 4: Estimates of the Population by Race and Hispanic or Latino Origin for the United States and States (July 1, 2005), <http://www.census.gov/popest/states/asrh/SC-EST2005-04.html> (last visited Jan. 3, 2008).

58. *See infra* Table 2 at p. 333.

region has increased only slightly since 1993.⁵⁹ Sixty-five percent of the Caucasian women and 52% of the African American women were from the South.⁶⁰

Table 3 of this article presents similar data for women on death row.⁶¹ Over half (51%) of all the women currently on death row are also from the South.⁶² This finding is consistent with a similar study conducted by Kathryn Ann Farr that found that the majority (54%) of the women on death row were from the South.⁶³ Whereas the women of color in the Farr study were evenly distributed across the four regions of the United States,⁶⁴ the women of color who are currently on death row are concentrated in the South and West, at 32% and 39% respectively.⁶⁵ When women of color are further divided, the data provide some interesting findings. In fact, approximately 58% of the African American women and 100% of the Native American women are from the South, whereas 100% of the Hispanic women are from the West.⁶⁶ As well, 100% of the Latina women currently on death row are from California.⁶⁷ Interestingly, the only Latina woman executed between 1973 and June 30, 2007, was from a southern jurisdiction in the United States.⁶⁸ While only two of the eleven women executed in the United States from 1973 to June 30, 2007, were African American women,⁶⁹ an overwhelming number of death penalty jurisdictions have significant minority populations.⁷⁰

Table 4 of this article shows the frequency and percentage of female offenders who have received commuted and/or reversed sentences by race and region.⁷¹ In general, the South granted the largest percentage (60%) of commuted and reversed sentences for female death row offenders.⁷² Almost two-thirds (66%) of the Caucasian women who received commuted and/or reversed sentences were from southern jurisdictions whereas African American women receiving commuted and/or reversed sentences were more evenly distributed between the

59. See Farr, *supra* note 15, at 265 (stating that the southern region accounted for 54.3% of female death sentences in 1993).

60. See *infra* Table 2 at p. 333.

61. See *infra* Table 3 at p. 334 (compiling data from the Streib report, *supra* note 3).

62. *Id.*

63. Farr, *supra* note 15, at 265.

64. *Id.*

65. See *infra* Table 3 at p. 334.

66. *Id.*

67. STREIB, *supra* note 3, at 11-16.

68. *Id.* at 12.

69. *Id.* at 9, 13.

70. See U.S. Census Bureau, *supra* note 57.

71. See *infra* Table 4 at p. 334.

72. *Id.*

South (48%) and the Midwest (41%).⁷³ All Native Americans receiving commuted/reversed sentences were from the South.⁷⁴

To fully examine racial differences and/or disparities as they relate to commuted and reversed sentences, a comparative analysis using Tables 2 and 4 of this article was employed. In general, the percentage of female offenders receiving commuted and/or reversed sentences across races appears fairly consistent with the percentage of female offenders receiving the death penalty across races and by region.⁷⁵ However, women of color, particularly Native Americans, appear to be more likely to receive commuted and/or reversed sentences.⁷⁶ Although only four Native Americans have received death row sentences, three-quarters (75%) of them have received commuted/reversed sentences.⁷⁷ This percentage is higher than for any other group.⁷⁸

As there are so few women currently on death row, particularly minority women, statistical inferences by race are almost impossible.⁷⁹ Still, a review of the racial differences by geographic region may provide some interesting insights into the importance of regional differences in the criminal justice system. As early as 1949, Harold Garfinkel questioned the justice system in the South.⁸⁰ He wrote, "black and white justice systems in the South are administered by the same elite power structure, but justice for blacks is vindictive and emotional, while justice for whites is secular and rational."⁸¹ Almost 30 years later, Laurence French found that black women were over-represented in North Carolina's criminal system.⁸² He indicated that the overrepresentation of black women in the North Carolina criminal system "may be the result of discrimination at various stages in the judicial process."⁸³ While French proffered that "the patterns of justice in North Carolina, and in the South in general, may be extreme," he felt that "black women offenders may . . . [have] suffer[ed] similar forms of discrimination elsewhere in the United States."⁸⁴ If French's

73. *Id.*

74. *Id.*

75. Compare Table 4, *infra* p. 334, with Table 2, *infra* p. 333.

76. *Id.*

77. *Id.*

78. *Id.*

79. See *infra* Table 1 at p. 333 (listing 157 women sentenced to death between 1973 and 2007).

80. Laurence French, *An Assessment of the Black Female Prisoner in the South*, 3 SIGNS 483, 483 (1977).

81. *Id.*

82. *Id.*

83. *Id.* at 488.

84. *Id.*

findings were accurate, now almost sixty years later, Garfinkel's thesis may still hold true for other states with high minority populations. With 66% of the women of color sentenced to the death penalty between 1973 and June 30, 2007 from southern jurisdictions and jurisdictions with high minority populations,⁸⁵ more extensive data on executions of women may provide sufficient data to examine racial differences with greater statistical accuracy.

C. Additional Racial Differences

Further analysis of Streib's data, found in Appendix A and B of *Death Penalty for Female Offenders*, provides additional racial comparisons of women on death row.⁸⁶ Overall, the data does not reveal significant racial differences in age for women on death row.⁸⁷ For all women sentenced to death, the average age at which they committed the crime leading to their sentence was 30.75 years old.⁸⁸ Caucasian women were on average 31.65 years old when they committed the crime leading to their death sentence, while women of color were only slightly younger at 29.22 years old at the time of crime.⁸⁹ Table 5 of this article presents data on the race of the offender and the race of the victim for women currently on death row.⁹⁰ A review of the data on the race of the victim of female offenders on death row also revealed interesting differences among offenders based on their race. Caucasian women (65%) were more likely to have murdered loved ones/relatives and/or acquaintances, while African American women were more likely to have murdered non-relatives/acquaintances (83%).⁹¹ Interestingly, Latina women (80%) were also more likely to have murdered loved ones/relatives.⁹²

The data for this report does not address the issue of abuse suffered by the offender or other mitigating circumstances related to the offender's crimes.⁹³ A review of the literature, however, provides support for the proposition that female offenders on death row suffered from abuse. The Death Penalty Information Center (DPIC) and others have found that a majority of the female offenders on death

85. See *infra* Table 2 at p. 333.

86. STREIB, *supra* note 3, at 11-22.

87. See *id.*

88. See *id.* at 17-22.

89. *Id.*

90. See *infra* Table 5 at p. 335.

91. STREIB, *supra* note 3, at 17-22.

92. *Id.*

93. *Id.*

row were in abusive relationships or had been victims of abuse.⁹⁴ This finding may account for the large percentage of women, particularly Caucasian and Latina women, who murder loved ones and/or relatives.

As well, the data shows that Caucasian women were more likely to commit capital murder of males (65% murdered males only), while African American women were more likely to kill female victims (50% murdered females only).⁹⁵ These findings are also consistent with Farr's study of women on death row.⁹⁶ With regard to the victim's race, Caucasian and Latina women were more likely to commit intra-racial murders.⁹⁷ On the other hand, African American women were less likely to commit intra-racial murders, with 47% of their victims being Caucasian and 27% being African American.⁹⁸

D. Justice System Decision Makers

To address the issue of racial disparities between female offenders sentenced to the death penalty, the role of key decision makers in the justice system is critical.⁹⁹ While the data examined for this paper did not provide information to assess racial bias exhibited by justice system players, a review of the literature provides essential background on this topic.¹⁰⁰ The literature shows that the key decision makers are primarily white¹⁰¹ — police officers make the arrests; prosecutors decide whether to prosecute and the penalties sought; and juries, along with the judges, determine truth and whether the burden of proof is satisfied.¹⁰² Each of these groups can play a significant role in the determination of whether an offender or accused offender ends up on death row and/or executed.¹⁰³

Very few individuals would dispute the assertion that racial bias exists in the judicial system. Richard Dieter, Executive Director of the Death Penalty Information Center, critically underscored the injustice that occurs in the application of the death penalty to different races

94. See ACLU, *THE FORGOTTEN POPULATION*, *supra* note 1, at 3.

95. STREIB, *supra* note 3, at 17-22.

96. Farr, *supra* note 15, at 263.

97. See *infra* Table 5 at p. 335. Data revealed that 84% of Caucasian women and 89% of Latina women committed intra-racial murders. *Id.*

98. *Id.*

99. Richard C. Dieter, Death Penalty Info. Ctr., *The Death Penalty in Black and White: Who Lives, Who Dies, Who Decides* (June 1998), <http://www.deathpenaltyinfo.org/article.php?scid=45&did=539> (last visited Jan. 15, 2008).

100. *Id.*

101. *Id.*

102. See *id.*

103. See *id.*

as a result of primarily white decision makers in death penalty determinations.¹⁰⁴ In his report, Dieter cited numerous instances of racial slurs used by court decision makers and attempts to use race as a factor in decision making.¹⁰⁵ Additionally, of the 1,794 district attorneys in death penalty states, only twenty-two are African American and only twenty-two are Hispanic.¹⁰⁶ These numbers confirm the complete domination by whites of the very critical prosecutorial position.¹⁰⁷ Since 1998, there has not been an appreciable difference in the race or sex of the decision makers.¹⁰⁸ Particularly in the South, due to the history of slavery and Jim Crow in these jurisdictions, the perception of racial motives is naturally strong.

E. Inadequate Defense Counsel

Our data resources did not address whether offenders on death row used a court-appointed/public defender as legal counsel. However, reports from the ACLU, *New York Times*, *Durham Independent Weekly*, and *London Times* state that women have suffered due to poor representation.¹⁰⁹ In many cases, the offender's representative did not legally perform.¹¹⁰ Bob Burtman, of the *Independent Weekly*, highlighted a number of examples of incompetent or ineffective lawyers representing defendants facing the death penalty, many of whom provided substandard legal assistance.¹¹¹ Burtman also cited numerous cases where offenders were represented by attorneys with their own drug or criminal offenses.¹¹² As early as 2000, *The Times* published an article addressing some of the injustices suffered by death row offenders due to poor legal representation.¹¹³ The article stated that approximately one quarter of the death row inmates in Texas

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. Lucy Adams, Comment, *Death By Discretion: Who Decides Who Lives and Dies in the United States of America?*, 32 AM. J. CRIM. L. 381, 388-90 (2005).

109. Press Release, American Civil Liberties Union, New ACLU Report Documents Harsh Conditions Faced by Women Living on Death Row (Nov. 29, 2004), available at <http://www.aclu.org/capital/general/10629prs20041129.html>; see also Bob Burtman, *Criminal Injustice*, INDEP. WKLY. (Durham), Oct. 16, 2002, available at 2002 WLNR 11623829; Crystal Nix Hines, *Lack of Lawyers Hinders Appeals in Capital Cases*, N.Y. TIMES, July 5, 2001, at A1, available at 2001 WLNR 3410389; Ben Macintyre, *Death Row Lawyers Guilty of Misconduct*, THE TIMES (U.K.), Sept. 11, 2000, at 14, available at 2000 WLNR 9716561.

110. See sources cited *supra* note 109.

111. Burtman, *supra* note 109.

112. *Id.*

113. Macintyre, *supra* note 109.

had been represented by court-appointed lawyers disciplined for incompetence or misbehavior by the Texas Bar.¹¹⁴ These findings are significant given that Texas has executed the highest number of inmates since 1973,¹¹⁵ and reports the second highest number of women on death row.¹¹⁶ As late as 2004, the ACLU reported that women on death row often had ineffective counsel and were victims of misconduct by prosecutors and law enforcement officers.¹¹⁷ The significance of these findings are further compounded by the number of death row inmates who lack the assistance of legal counsel when planning an appeal.¹¹⁸ *The New York Times* published an article revealing that a dozen death row inmates lacked attorneys to assist them with appeals.¹¹⁹ As an aside, the article noted that Alabama and Georgia do not guarantee counsel for death-row inmates.¹²⁰ This information is particularly disturbing when one considers that the number of women who have been on death row in Alabama (ten) and Georgia (six) since 1973 constitutes 10% of the females receiving death sentences.¹²¹

CONCLUSION

Racial disparities and other discrepancies exist among females sentenced to the death penalty.¹²² However, definitive conclusions explaining why these differences exist are speculative due to the relatively small number of females receiving the death penalty in comparison to males.¹²³ Still, our data demonstrates that some racial disparities do exist with regard to women receiving death sentences.¹²⁴ In general, the data shows that the percentage of African American and Native American women receiving death-row sentences greatly exceeded those percentages for women of other races, based on national female population percentages.¹²⁵ Additionally, African American and Native American women receiving death sentences received a higher percentage of commuted and/or reversed sentences than women of

114. *Id.*

115. STREIB, *supra* note 3, at 7-8 tbl.3. Oklahoma has also executed the same number of women since 1973. *Id.*

116. *Id.* at 11-16. California currently has fifteen women on death row, while Texas currently has ten. *Id.*

117. Press Release, American Civil Liberties Union, *supra* note 109.

118. Hines, *supra* note 109.

119. *Id.*

120. *Id.*

121. STREIB, *supra* note 3, at 11-16.

122. *See infra* Table 1 at p. 333.

123. *See sources cited supra* note 18.

124. *See supra* text accompanying notes 33-42.

125. *Id.*

other races.¹²⁶ These findings suggest that while African American and Native American females may be sentenced to death row at a higher rate, they also have a greater chance of not being executed due to reversed or commuted sentences. The data also show some disparities for Caucasian women receiving death row sentences.¹²⁷ Specifically, Caucasian females are executed at a much higher rate than minorities on death row.¹²⁸ This percentage is higher than their representation in the general female population.¹²⁹

The data also reveals some general racial differences with regard to the murder victims of women receiving death row sentences.¹³⁰ African American female offenders' murder victims were white almost 50% of the time.¹³¹ The one Native American offender's murder victim was also white.¹³² Research suggests that the race of the victim may result in a greater chance of the offender receiving the death penalty.¹³³ While our data cannot conclusively support this, it could explain why African American and Native American females are disproportionately represented in receiving the death penalty. The data also showed a difference in the murder victims' relationship to the offender.¹³⁴ Caucasian females' murder victims were more likely to be a relative/intimate.¹³⁵ However, African Americans and Native Americans were more likely to murder non-relatives or acquaintances than other offenders.¹³⁶ This finding supports the finding in Farr's study of white and minority women on death row.¹³⁷ Farr found that white women were more likely than non-white women to murder significant others.¹³⁸

In general, the region or sentencing jurisdiction significantly affected the chances of females receiving the death penalty.¹³⁹ Specifically, the southern region of the United States accounted for over half of all women receiving death sentences.¹⁴⁰ With regard to race, our data revealed some minor differences with respect to region/sentencing

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *See supra* Table 5 at p. 335.

131. *Id.*

132. *Id.*

133. *See, e.g.,* Amnesty International USA, *supra* note 12.

134. STREIB, *supra* note 3, at 17-22.

135. *Id.*

136. *Id.*

137. Farr, *supra* note 15, at 263.

138. *Id.*

139. *See infra* Table 2 at p. 333.

140. *See id.*

jurisdiction.¹⁴¹ The data revealed that while the southern region accounted for over half of all Caucasian and African American women sentenced to death, Latina women sentenced to death were mostly from the West.¹⁴² In fact, all Latina women currently on death row come from one state, California,¹⁴³ which has a high population of Latinas.

Lastly, our data did not allow us to address the issue of inadequate defense counsel or the role of key judicial decision makers on those receiving the death penalty. Numerous research studies, however, have identified the substandard legal assistance received by offenders given the death penalty.¹⁴⁴ Bias of key decision makers in the justice system, such as by prosecutors, juries, or judges, unquestionably undermines the fairness in the administration of the death penalty.¹⁴⁵ The findings in this study are not without limitations. The limited numbers of females receiving the death penalty, currently on death row, and executed in the United States since 1973 greatly hampered statistical analyses.¹⁴⁶ As a result, the authors could not make definitive conclusions as to why the racial differences existed.¹⁴⁷ Future research on this topic will need to explore more extensively all capital punishment trials for women before scholars can make definitive inferences about racial disparities.

141. *Id.*

142. *Id.*

143. STREIB, *supra* note 3, at 11-16.

144. *See* sources cited *supra* note 109.

145. Dieter, *supra* note 99.

146. *See* sources cited *supra* note 18.

147. *Id.*

TABLE 1*
SENTENCING STATUS OF FEMALE OFFENDERS BY RACE FROM 1973-
MARCH 31, 2007 BY STATUS

RACE

Sentence Status	Caucasian	African American	Latina	Native American	Total
Currently on Death Row	31 (31%)	12 (29%)	5 (50%)	1 (25%)	49 (31%)
Executed	9 (9%)	2 (5%)	0 (0%)	0 (0%)	11 (7%)
Reversed/ Committed	61 (60%)	27 (64%)	4 (40%)	3 (75%)	95 (61%)
Died awaiting execution	0 (0%)	1 (2%)	1 (10%)	0 (0%)	2 (1%)
Total %	101 (64.3%)	42 (26.8%)	10 (6.4%)	4 (2.5%)	157 (100%)

*VICTOR L. STREIB, DEATH PENALTY FOR FEMALE OFFENDERS, JANUARY 1, 1973 THROUGH JUNE 30, 2007, at 11-16 (July 13, 2007), available at <http://www.deathpenaltyinfo.org/FemDeathJune2007.pdf>.

TABLE 2*
FEMALE OFFENDERS RECEIVING DEATH SENTENCES SINCE 1973 BY
REGION AND RACE

RACE

Sentencing Jurisdiction/ Region**	Caucasian (n = 101)	African American (n = 42)	Latina (n = 10)	Native American (n = 4)	Total (n = 157)
South	66 (65%)	22 (52%)	1 (10%)	4 (100%)	93 (59.2%)
West	15 (15%)	4 (10%)	6 (60%)	0 (0.0%)	25 (16.0%)
Midwest	13 (13%)	12 (29%)	3 (30%)	0 (0.0%)	28 (17.8%)
Northeast	7 (7%)	4 (10%)	0 (0.0%)	0 (0.0%)	11 (7.0%)

*VICTOR L. STREIB, DEATH PENALTY FOR FEMALE OFFENDERS, JANUARY 1, 1973 THROUGH JUNE 30, 2007, at 11-16 (July 13, 2007), available at <http://www.deathpenaltyinfo.org/FemDeathJune2007.pdf>.

**Regions were aligned with the Death Penalty Information Center's designations.

TABLE 3*
FEMALES ON DEATH ROW BY REGION AND RACE

Region	Caucasian (n = 31)	African American (n = 12)	Latina (n = 5)	Native American (n = 1)	Total (n = 49)
South	17 (54.8%)	7 (58.3%)	0 (0.0%)	1 (100%)	25 (51%)
West	11 (35.5%)	2 (16.7%)	5 (100%)	0 (0.0%)	18 (37%)
Midwest	2 (6.5%)	1 (8.3%)	0 (0.0%)	0 (0.0%)	3 (6%)
Northeast	1 (3.2%)	2 (16.7%)	0 (0.0%)	0 (0.0%)	3 (6%)

*VICTOR L. STREIB, DEATH PENALTY FOR FEMALE OFFENDERS, JANUARY 1, 1973 THROUGH JUNE 30, 2007, at 11-16 (July 13, 2007), available at <http://www.deathpenaltyinfo.org/FemDeathJune2007.pdf>.

TABLE 4*
FEMALE OFFENDERS RECEIVING COMMUTED/REVERSED SENTENCES
BY RACE AND REGION

Region	Caucasian (n = 61)	African American (n = 27)	Latina (n = 4)	Native American (n = 3)	Total (n = 95)
South	40 (66%)	13 (48%)	1 (25%)	3 (100%)	57 (60%)
Midwest	11 (18%)	11 (41%)	3 (75%)	0 (0%)	25 (26.3%)
West	4 (7%)	1 (4%)	0 (0%)	0 (0%)	5 (5.3%)
Northeast	6 (10%)	2 (7.0%)	0 (0%)	0 (0%)	8 (8.4%)
Total	101%	100%	100%	100%	100%

*VICTOR L. STREIB, DEATH PENALTY FOR FEMALE OFFENDERS, JANUARY 1, 1973 THROUGH JUNE 30, 2007, at 11-16 (July 13, 2007), available at <http://www.deathpenaltyinfo.org/FemDeathJune2007.pdf>.

TABLE 5*
FEMALE OFFENDERS CURRENTLY ON DEATH ROW BY RACE OF
VICTIM AND OFFENDER

VICTIM RACE

Offender Race	Caucasian	African American	Latina	Native American	Asian American	Total
Caucasian	38 84.4%	1 2.2%	6 13.3%	0 0%	0 0%	45 99.9%
African American	7 47%	4 27%	2 13%	0	2 13%	15 100%
Latina	1 11.1%	0	8 88.9%	0	0	9 100%
Native American	1 100%	0	0	0	0	1 100%

*VICTOR L. STREIB, DEATH PENALTY FOR FEMALE OFFENDERS, JANUARY 1, 1973 THROUGH JUNE 30, 2007, at 17-22 (July 13, 2007), available at <http://www.deathpenaltyinfo.org/FemDeathJune2007.pdf>.