

# LOUISIANA DEATH-SENTENCED CASES AND THEIR REVERSALS, 1976-2015

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## ABSTRACT

*Since 1976, Louisiana's experience with capital punishment has been deeply dysfunctional, with a significantly higher case reversal rate than the national average, and marked disparities in sentencing, reversals, and executions depending on the race and gender of the victim and accused. Our comprehensive analysis of each of 241 death-sentence cases in the post-Gregg period suggests that the "modern" death penalty has not resolved the issues of arbitrariness and bias that concerned the US Supreme Court in the 1972 Furman decision, which invalidated previous death penalty statutes throughout the country. Among 155 resolved death-sentence cases, there have been 127 reversals (of which nine were exonerations) and 28 executions. Since 2000, Louisiana has seen 50 reversals of previous death sentences, including seven exonerations, and only two executions. Not only are these reversal rates extremely high, but the racial discrepancies are shocking as well. Death sentences are imposed in 0.52% of cases with black male offenders and black male victims, but in 15.56% of cases with black male offenders and white female victims – 30 times more likely. No matter the race of the offender, killers of whites are more than six times more likely to receive a death penalty than killers of blacks, and 14 times more likely to be executed. The racial disparities even extend into the appeals process, where cases of killers of whites are clearly less likely to be reversed. No white person has been executed in Louisiana for a crime against a black victim since 1752.*

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I.	INTRODUCTION .....	59
	Table 1. Disposition of Death-Sentenced Cases in Louisiana since 1976. ....	61
	Table 2. Comparison of Louisiana and US Death-Sentenced Cases. ....	62
II.	LOUISIANA’S HOMICIDE AND DEATH SENTENCE RATES AND TRENDS .....	63
	Figure 1. Louisiana vs. United States Homicide Rate. ....	63
	Figure 2. Louisiana Homicide vs. Death Sentence Rate. ....	64
	Figure 3. Death Sentences and their Outcomes. ....	65
	A. Changing Rates of Death Sentences and Case Resolutions .....	65
	Figure 4. Since 2000 – Death Sentences and their Outcomes. ....	66
	B. About Reversals .....	67
	Table 3. Reasons for Death Sentence Reversals. ....	68
	C. About the Exonerated .....	68
III.	RACE, SEX, AND REVERSAL RATES .....	69
	Table 4. Defendant and Victim Race Combinations in Death-Sentenced Cases. ...	71
	A. Comparing Reversal Rates .....	72
	B. Female Defendants .....	72
	C. White v. Black Cases .....	72
IV.	CONCLUSION .....	73

## I. INTRODUCTION

The majority opinion of the US Supreme Court in 1972, reviewing three death penalties given to poor Southern black males for crimes that would not be death-eligible today, found the death penalty unconstitutional. The Court deemed the punishment “unusual” if it discriminates by “race, religion, wealth, social position, or class,” and that “the basic theme of equal protection is implicit in ‘cruel and unusual punishments.’” It concluded that the Eighth Amendment requires legislatures to write penal laws that are “even-handed, nonselective, and non-arbitrary, and for

judges to see to it that general laws are not applied sparsely, selectively, and spottily to unpopular groups.”<sup>1</sup>

To reduce arbitrariness, a number of states devised statutes of mandatory death for certain crimes, but these laws were ruled unconstitutional by the US Supreme Court in *Woodson v. North Carolina*<sup>2</sup> and *Roberts v. Louisiana* in 1976. That same year the court approved, in *Gregg v. Georgia*, Georgia’s sentencing procedures that channeled the jury’s attention onto a case’s particularities, and this became known as a “guided discretion” statute, and was quickly adopted by many other states.

Since the death penalty was reinstated with this decision in 1976, through August, 2015, Louisiana juries have delivered sentences of death in 241 cases for various crimes, nearly all of them homicides. In the years 1976-2011, the Federal Bureau of Investigation reported 20,942 Louisiana homicides that were classified as criminal rather than justified. Thus the death penalty has been imposed in about 1% of criminal homicide cases; and, as discussed below, an execution has been carried out in about 10% of these, or 0.1% of all criminal homicide cases.

This study closely examines the facts of these 241 death-sentenced cases, what has happened to them over time, and whether they show arbitrariness in their application. It finds that most death sentences are later overturned, that there are considerably more reversals than actual executions, that Louisiana has seen approximately one exoneration for every three executions carried out, and that in the current century there have been more exonerations than executions. It also finds that death sentences are highly dependent on the race and gender of the victim and of the offender, and that reversal rates are similarly dependent. In all, this statistical review of the outcomes of every modern death sentence imposed in the state shows such great flaws in the application of the ultimate penalty that it cannot be considered to be applied in any manner consistent with the tenets of even-handedness called for when the Supreme Court struck down capital punishment in 1972. No matter what the intent of Louisiana’s legislature may have been, the actual application of

1. *Furman v. Georgia*, 408 U.S. 238, 256 (1972) (Douglas, J. concurring).

2. See Frank R. Baumgartner, *North Carolina’s Wasteful Experience with the Death Penalty* (Feb. 1, 2015), [http://www.unc.edu/~fbaum/Innocence/Baumgartner\\_NC\\_Death\\_Reversals-1-Feb-2015.pdf](http://www.unc.edu/~fbaum/Innocence/Baumgartner_NC_Death_Reversals-1-Feb-2015.pdf) (discussing North Carolina’s statutory history).

capital punishment – that is, executions – has been selective and arbitrary. It has also been extremely rare, even within the death-sentenced group. Table 1 summarizes the outcomes of all modern death-sentence cases.

Table 1. Disposition of Death-Sentenced Cases in Louisiana since 1976.

Disposition of Defendants	Male	Female	White	Black	Other	Total
On Death Row	78	2	25	54	1	80
Died on Death Row	6		4	2		6
<i>Subtotal:</i> Cases Unresolved	84	2	29	56	1	86
Off Death Row	118		45	73		118
Home (Exonerated)	9		3	6		9
<i>Subtotal:</i> Sentence Reversed	127		48	79		127
Executed (Sentence Applied)	28		15	13		28
<i>Subtotal:</i> Cases Resolved	155		63	92		155
Total: All Death Sentences	239	2	92	148	1	241

Table 1 shows that 155 of the 241 death-sentenced cases (64.3%) have been resolved (cases in which inmates have not left death row or have died while on death row are unresolved since neither the sentence nor its reversal has been applied). Of these 155 resolved cases, 28 were resolved with executions, and 127 were resolved with the death sentence being reversed. Thus, just 18% of resolved cases were executions, and 82% of resolved cases were reversals. Nine of these reversed cases (7% of them) were exonerations, meaning that exonerations have occurred approximately once for every three executions (9 exonerations, 28 executions). Table 2 compares these Louisiana results with those of the USA as a whole.<sup>3</sup>

3. Tracy L Snell, *Capital Punishment, 2013 – Statistical Tables*, US DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS (DECEMBER), NCJ 248448, table 16 (2014) <http://www.bjs.gov/content/pub/pdf/cp13st.pdf>; Death Penalty Info. Ctr. (2016), <http://www.deathpenaltyinfo.org/murder-rates-nationally-and-state#MRord>. (US statistics are from Snell covering the period of 1973 through

Table 2. Comparison of Louisiana and US Death-Sentenced Cases.

Disposition of Cases	LA Cases	LA Percent	US Cases	US Percent
Total: All Death-Sentenced Cases	241	100%	8466	100%
On Death Row	80	33.2%	2979	35.2%
Died on Death Row	6	2.5%	509	6.0%
<i>Subtotal: Cases Unresolved</i>	86	35.7%	3488	41.2%
Off Death Row	118	49.0%	3464	40.9%
Home (Exonerated)	9	3.7%	155	1.8%
<i>Subtotal: Sentence Reversed</i>	127	52.7%	3619	42.7%
Executed (Sentence Applied)	28	11.6%	1359	16.1%
<i>Subtotal: Cases Resolved</i>	155	64.3%	4978	58.8%
Reversal Rate (Reversed/Resolved)	127 / 155	81.9%	3619 / 4978	72.7%

Louisiana has executed 4.5% fewer inmates than the national average (11.6% versus 16.1%), yet has 10% more reversals than the national average (52.7% versus 42.7%), including twice the national average of exonerations (3.7% versus 1.8%). Thus the reversal rate, which is all the reversed cases as a percentage of all the resolved cases, is higher than the national average by a statistically significant amount (81.9% versus 72.7%;  $p=0.013$ ).

The reversal rate is only an indicator of how well the law has been applied, not a clue to any remedies. Following the eight executions occurring in the summer of 1987, the reversal rate for Louisiana stood at 72%, but as time to resolution has increased since then, both in Louisiana and across the nation, the percent of resolutions that are executions has not. To the contrary, the reversal rate is 82% in all cases over nine years to resolution, 83% in cases over 10 years, and 92% in cases over 12 years. This latter percentage, 92%, applies to the 54 inmates currently on death row today more than 12 years. Also, five of the nine exonerations have occurred after 13 years on death row.

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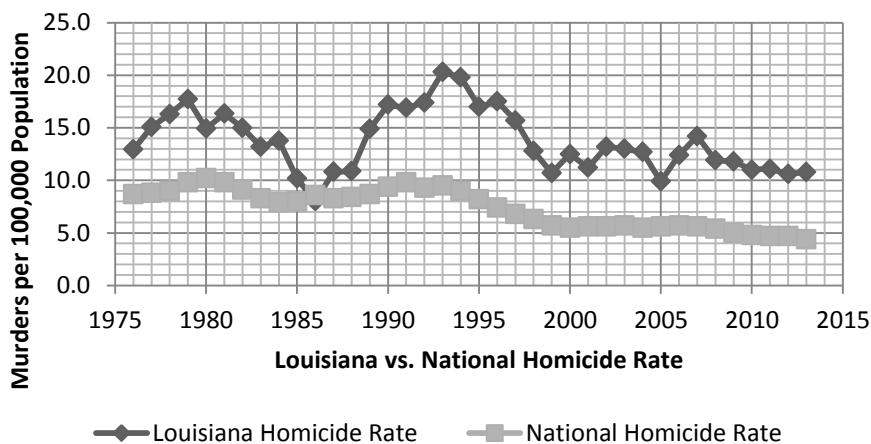
2013. The US exoneration number (155) is from Death Penalty Information Center as of July 2015.)

## II. LOUISIANA'S HOMICIDE AND DEATH SENTENCE RATES AND TRENDS

Louisiana has led all fifty states in homicide rate every year since 1989.<sup>4</sup> Generally, its homicide rate is twice the national average.

Figure 1 shows a comparison of Louisiana's homicide rate to that of the nation. Both the Louisiana rate and the National rate peak around 1980, and again in the early 1990s, peaks that roughly align with known epidemics in powder and crack cocaine use.

Figure 1. Louisiana vs. United States Homicide Rate.



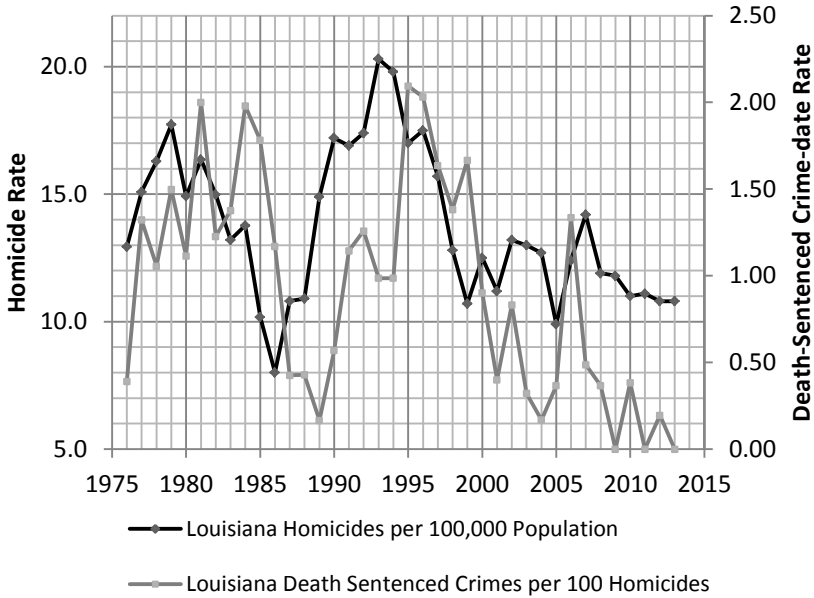
At the same time as the Louisiana homicide rate has persisted in recent years, staying above 10 per year per 100,000 population, Figure 2 below shows that the per-year rate of crimes leading to a death sentence has declined in the new century. (When looking at the right edge of the Figure 2 graph, note that there is on average an 803-day, or 2.2 year, gap between crime date and sentence date. Still, as of mid-2015, juries have chosen death only four times for crimes post-2008.)

Prosecutors have seemed to seek more death sentences in reaction to trends in the homicide rate – the peaks and valleys of the crime-date rate generally trail the peaks and valleys of the

4. Death Penalty Info. Ctr. (2016), <http://www.deathpenaltyinfo.org/murder-rates-nationally-and-state#MRord>.

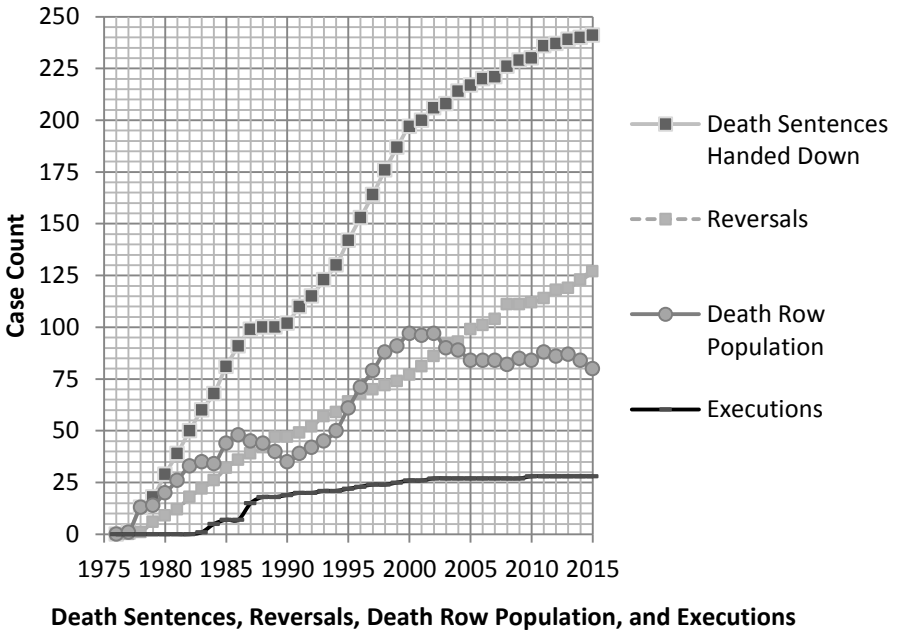
homicide rate generally by several years. As an aside, the spike in seeking death for crimes committed in 2006 could have to do with the upheaval of Katrina refugees newly spread out across the state; however, the raw number is only seven cases that year.

Figure 2. Louisiana Homicide vs. Death Sentence Rate.



The effect of slowing rates of death sentences and executions is that the population of death row has actually decreased to 80 inmates today, down 18% from a peak of 97 inmates in 2000. Figure 3 illustrates that, despite the decline of these rates recently, reversals of death judgments march upward at a remarkably steady rate.

Figure 3. Death Sentences and their Outcomes.



#### A. Changing Rates of Death Sentences and Case Resolutions

The frequency of death sentences and the rapidity of case resolutions has been changing over time, as can be seen in Figure 3. Let us note some things about the 1980s here.

- *Executions came in waves at the beginning.* When the first execution occurred at the end of 1983, there had already been 23 reversals, so the reversal rate went from 100% to 96%. Six more executions followed in the next 13 months. After a 2.5 year hiatus, executions returned with 11 in a 12-month period in 1987-88, and the reversal rate hit an all-time low of 70%. These 18 executions had taken 4 years on average to come about. The next nine executions, roughly one per year through the 1990s, took an average of 11 years from sentence to execution. Since reversals are the one outcome to have a steady rate of increase, the reversal rate was up to 76% at the end of the century.

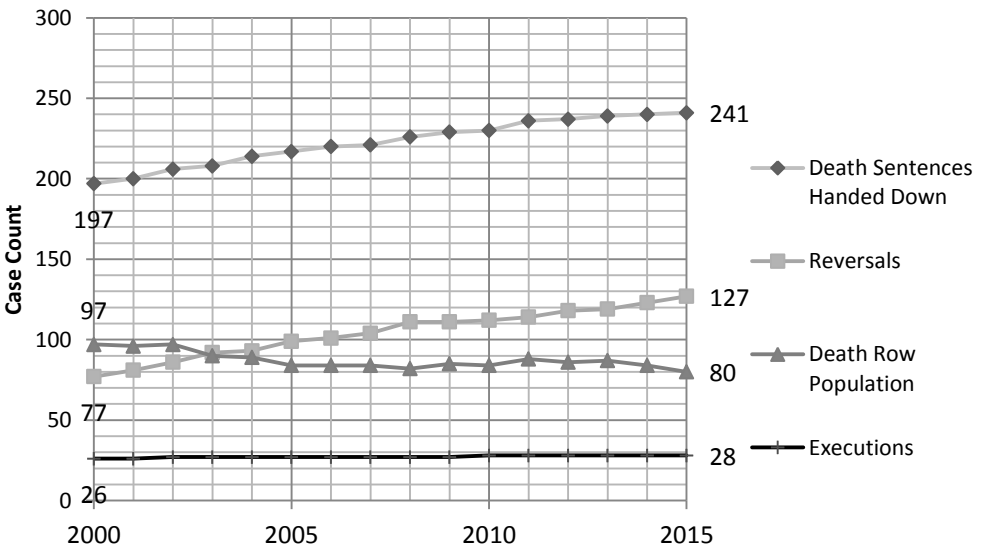


- *Reversals occurred quickly when the death penalty system was in startup mode.* Of the 40 quickest reversals, occurring within two years of sentencing, 32 happened before 1990. Judges, prosecutors, and defense attorneys were inexperienced with the new constitutional mandates such as proportionality review that became refined after the 1976 *Gregg* decision. As time passed and hard experience showed what would pass review and what would not, reversals no longer occurred so quickly. Of the 31 reversals that took more than nine years to come about, 24 have been since 2000.
- *Perhaps in response to the 11 executions in 12 months ending in June 1988,* only one death sentence was handed down in Louisiana from that time through to the fall of 1990.

The conclusion is inescapable from these trends that the rapid resolutions of the early years were not to set a pattern for the future. Rapid executions, like rapid reversals, are a thing of the past. After the first seven executions in 13 months, and then the next 11 executions in 12 months, there have been no more than one in any year since, and *only* one in the last 13 years. All the while, the reversals, and then the exonerations, have mounted monotonically.

Let's take a closer look at the section of Figure 3 since 2000:

Figure 4. Since 2000 – Death Sentences and their Outcomes.



Death Sentences and Their Outcomes Since 2000

Here in the new century, death sentence totals have increased from 197 to 241, a gain of 44 cases, or 22%. Reversals have increased from 77 to 127, a gain of 50 cases, or 65%. Reversals have actually outpaced death sentences since the twenty-first century began. Since 2010, there have been 10 death sentences and 15 reversals. Meanwhile, executions have only increased from 26 to 28, a gain of two cases, or 8%. The reversal rate since 2000 has been 96.2 percent (50 reversals out of 52 resolutions).

### *B. About Reversals*

Reversals happen as part of the review established by law to verify that the ultimate sanction be carried out only after lawfulness has been assured. To be clear, a reversal does not necessarily denote an error in the assignment of guilt; rather, it denotes an error in the lawfulness of the process. It may be surprising to some that the *typical* outcome of a death sentence is reversal, but perhaps more than anything a capital trial is a highly emotional process; a terrible crime underlies every case. Of course, to a prosecutor whose final argument has resulted in a jury returning a sentence of death, any reversal seems a technicality, or may be presented as such. However, by law in Louisiana, there is no such thing – relief cannot be granted unless the error abrogates the substantial rights of the defendant, and appellate courts do not vacate death sentences without such abrogation. Withheld evidence, improper jury instructions, or other serious flaws in a trial must be demonstrated. While their cases were reviewed, inmates whose death sentences were reversed spent 695 years in solitary confinement.

Table 3 below shows approximate reasons for the 127 Louisiana death sentence reversals. They are approximate because many categories overlap, and each reasoning is unique. Nevertheless, a general classification is presented.

Table 3. Reasons for Death Sentence Reversals.

Category	Number of Cases
1) Judicial error	<b>38</b> (15 pre-trial, 8 guilt phase, 11 sentencing, 4 general)
2) Prosecutorial misconduct	<b>25</b> (2 guilt phase, 7 sentencing, 9 Brady, 4 Batson, 3 confession)
3) Constitutionally excessive	<b>20</b> (10 Atkins, 2 Kennedy, 5 Roper, 3 proportionality)
4) Ineffective assistance of counsel	<b>20</b> (3 guilt phase, 14 sentencing, 3 conflict of interest)
5) Settlement	<b>14</b> (negotiated agreement to reduce sentence)
6) General review	<b>10</b> (evidence/aggravation/record problems, commutation, etc.)

### C. About the Exonerated

In the United States, since 1976, there have been 1,412 executions through July 2015. During this period there have also been 155 exonerations, findings of innocence in which the death-sentenced inmate was sent home, after an average time of 11.3 years on death row. That is 1.2 years of an innocent person's life spent in the solitary confinement of death row for every execution, and one exoneration for every nine executions.

In Louisiana, since 1976, there have been 28 executions, compared to nine exonerations averaging 12 years on death row, so 3.9 years of an innocent person's life spent in solitary confinement for every execution. One inmate has been exonerated for every three executed, three times the national rate. The total number of years the exonerated have spent in solitary confinement, 108, is unconscionable by any measure. These long stays for innocent people in solitary confinement raise doubts as to whether prosecutors in Louisiana feel any duty to look dispassionately at questionable cases. A conviction integrity unit or

any similar review could screen cases with possible error to reduce the exoneration time.<sup>5</sup>

All of the exonerations have come since 1995, with seven of the nine occurring in the new century. Contrast that with just two executions since 2000. Not only have reversals become more common than new death sentences, as discussed above, but in the new century exonerations have outpaced executions. A better funded capital defense system in Louisiana allows more of these errors to be discovered.

### III. RACE, SEX, AND REVERSAL RATES

There have been 270 homicides of white women committed by black men in Louisiana since 1976, resulting in 42 death sentences, a rate of 15.56%.<sup>6</sup> If all homicides had this death sentence rate of 15.56%, there would be 2,336 death-sentenced cases ( $0.1556 \times 15,014$  known-race homicides), instead of 241. That is to say, a rate of 15.56% of homicides leading to a death sentence case is extremely high. Nationally and in Louisiana, death sentences average about one percent of homicides in the modern era.

Table 4 below shows these death-sentenced-case-per-homicide rates, including case status breakdowns, for each of the 16 defendant/victim combinations of sex and race among blacks and whites, plus a row below for cases involving Other races. Various discrepancies are observable. For example, the column % *DS / Homs* reports the total death-sentenced-case-per-homicide percentage for each demographic. Black Male v. All is 1.42%, but within this group, BM v. BM is 0.52%, and BM v. WF, as noted above, is 15.56%, about 30 times as much.

Of the 17 defendant/victim combinations of sex and race here, only six of the combinations comprise 97 percent of the cases, as can be seen in the % *DScol* column. These are: Black Male v. BM, BF, WM, and WF (four groups, 61%), and White Male v.

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5. Ctr. For Prosecutor Integrity, *Conviction Integrity Units: Vanguard of Criminal Justice Reform*, WHITE PAPER (2014), <http://www.prosecutorintegrity.org/wp-content/uploads/2014/12/Conviction-Integrity-Units.pdf>.

6. Homicide statistics are from the FBI, *Uniform Crime Reporting Supplementary Homicide Master File Listing*. The number of white female victims of black males in death-sentenced cases is actually 46, but 8 of these cases had both male and female victims. In these cases, we assign a value of 0.5 to each sex in order to keep the case count fixed at 241 and thus make meaningful comparisons between different groups.

WM and WF (two groups, 36%). Three groups comprise one percent each: WM v. BM, WM v. BF, and Other. Together, Black Female v. All and White Female v. All comprise one percent of death-sentenced cases, but each group individually rounds to zero percent.

Adding up all the black victim rows and white victim rows, the last two rows of Table 4 present their death-sentenced-case-per-homicide percentages, with the Black Victim rate at 0.63% (66 / 10,530), and the White Victim rate at 3.96% (173 / 4,371), over six times larger. Killers of white victims (24 / 4,371; 0.55%) are 14 times more likely to be executed than killers of black victims (4 / 10,530; 0.04%). That is, a death sentence is six times more likely if the victim is White, and an execution is more than 14 times more likely.

Not only are death sentences more likely if the victim is white; white victim cases are less likely to be reversed (79.7% versus 89.2% in black victim cases). So white victim cases are both many times more likely to lead to a death sentence or an execution than black victim cases, and at the same time less likely to be reversed for serious error. Race-of-victim effects are powerful at each stage of the death penalty system, accumulating as we move from the original sentence through to execution.

Table 4. Defendant and Victim Race Combinations in Death-Sentenced Cases.

Defendants v Victims	Homicides	%	Death Sentences	% DS/ Homs	X: Executions	% X/ Homs	R: Row+Died	% R/ Homs	O: Off+Home	% O/ Homs	% O/(R+O) Reversal Rate
<b>Black Male v. ALL</b>	10,247	69%	146	1.42%	13	0.13%	54	0.53%	79	0.77%	85.9%
v. BM	7,362	49%	38.5	0.52%	2.5	0.03%	15.5	0.21%	20.5	0.28%	89.1%
v. BF	1,631	11%	23.5	1.44%	1.5	0.09%	9.5	0.59%	12.5	0.77%	89.3%
v. WM	984	7%	42	4.27%	4	0.41%	15	1.52%	23	2.34%	85.2%
v. WF	270	2%	42	15.56%	5	1.85%	14	5.19%	23	8.52%	82.1%
<b>Black Female v. ALL</b>	1,287	9%	1	0.08%		0.00%	1	0.08%	0	0.00%	
v. BM	1,033	7%									
v. BF	206	1%									
v. WM	40	0%	1	2.50%			1	1%	2.50%		
v. WF	8	0%									
<b>White Male v. ALL</b>	2,818	19%	91	3.23%	15	0.53%	28	0.99%	48	1.70%	76.2%
v. BM	229	2%	2	0.87%			2	2%	0.87%		
v. BF	32	0%	2	6.25%			2	6.25%			
v. WM	1,704	11%	52.5	3.08%	5	0.29%	15	0.89%	32.5	1.91%	86.7%
v. WF	853	6%	34.5	4.04%	10	1.17%	9	1.06%	15.5	1.82%	60.8%
<b>White Female v. ALL</b>	549	4%	1	0.18%		0.00%	1	0.18%	0	0.00%	
v. BM	34	0%									
v. BF	3	0%									
v. WM	424	3%	1	0.23%			1	1%	0.23%		
v. WF	88	1%									
<b>BW TOTAL</b>	14,901	100%	239	1.55%	28	0.19%	84	100%	127	100%	81.9%
Other	113		2	1.77%			2	2%	1.77%		
Unknown	5,928										
<b>GRAND TOTAL</b>	20,942		241	1.15%	28	0.13%	86	0.41%	127	0.61%	81.9%
<b>All Black Victim</b>	10530	71%	66	0.63%	4	0.04%	29	0.28%	33	0.31%	89.2%
<b>All White Victim</b>	4371	29%	173	3.96%	24	0.55%	55	1.26%	94	2.15%	79.7%

Notes: 32 cases have victims of both sexes. In these cases, a value of 0.5 has been given to each sex, in order to keep the case count fixed, and thus to keep comparisons of groups in rows and columns meaningful. These cases are: 9 BM v. B2; 8 BM v. W2; and 15 WM v. W2. Shaded individual cells indicate statistically significant ( $p < .05$ ) variance from BW TOTAL row values. Some categories have expected frequencies less than 5, too small for Chi-Square testing of statistical significance.

### A. Comparing Reversal Rates

In Table 2, we saw the national reversal rate of death case resolutions was 72.7 percent (that is, that 72.7 percent of resolved cases were reversed), and that Louisiana's reversal rate is significantly higher. In the right-most column of Table 5, the reversal rate of Louisiana's White Male v. All cases is similar to the national rate, slightly but not significantly higher at 76.2 percent.

However, Black Male v. All cases have much higher reversal rates, sending the overall state rate over 81% into the realm of statistical significance, as compared to the national rate. These Black Male v. All cases, representing 61% of death sentences, are significantly more likely to be overturned, whether compared to the Louisiana White Male v. All reversal rate ( $p=0.04$ ), or to the national reversal rate ( $p=0.007$ ). The reversal rate for all Black defendant cases is 85.9 percent, and Black v. Black cases are still higher, at 89.2 percent.

On the other hand, White Male v. WF death sentences are significantly ( $p=0.012$ ) less likely to be reversed, with only a 60.8 percent reversal rate. Compare this with the reversal rate of Black Male v. WF cases, which, at 82.1 percent, is nearly the same as the overall rate of 81.9 percent.

Also, why would there be so many more reversals in Black Male v. BF cases as opposed to White Male v. WF cases? It is certainly not because there are more of these cases, though there are more of these murders. Crimes with black victims are less serious events, both less likely to lead to a death sentence and more likely to see those death sentences overturned.

### B. Female Defendants

It is remarkable how there have been only two death sentences handed down to female defendants, out of 1,836 criminal homicides. The overall *DS / Homs* rate is 0.11%.

### C. White v. Black Cases

The reversal rate for white people executed for murdering black people is not a discriminate statistic because no white person convicted and sentenced to death for killing a black person

has been executed since 1752<sup>7</sup> when, under French rule, a 24-year old soldier was hanged for attempted murder after bayoneting two black slave women (both of whom survived the attack). Three white inmates are currently on death row for killing black victims, and another is deceased. However, Louisiana has not carried out an execution for such a crime in over 260 years.

Of course, there were many white versus black murders throughout Louisiana's history, but only some have been counted, and most counted only recently. Major Lewis Merrill of the U.S. Army stated the obvious in front of a congressional committee in 1875 when he asserted that "the killing of a black was not considered as a murder by the whites in. . . [Louisiana], and no local grand jury would indict a white for such murder."<sup>8</sup> Nevertheless we can count 298 homicides in the modern era, plus a minimum of 540 lynchings between 1877 and 1950 in the state,<sup>9</sup> plus 1,472 murders in reconstruction (1865-1878)<sup>10</sup>, reaching a total of 2,310 to start, before we confront the unknowable numbers from the 145 years of slavery through the clandestine activities of the Jim Crow era. All this is to say that white-on-black crime has in fact been quite common throughout the history of Louisiana, but no white has faced the ultimate judicial consequence for such a crime since 1752.

#### IV. CONCLUSION

In the period since the reinstatement of the death penalty in 1976, Louisiana has seen 241 death-sentenced cases, of which 28 executions have been carried out and 127 sentences have been reversed. For every execution, in other words, there have been almost five reversals. Since 2000, there have been 50 reversals and two executions. The reasons for these reversals are spread out across the entire death penalty process, with dozens of errors each in pre-trial, guilt, and penalty phases, and by judge, prosecutor, and defense counsel. The fact that judge error leads all re-

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7. M. WATT ESPY & JOHN ORTIZ SMYKLA, *EXECUTIONS IN THE UNITED STATES, 1608-2002: THE ESPY FILE* (4<sup>th</sup> ICPSR ed. 2004).

8. Gilles Vandal, "Bloody Caddo": *White Violence Against Blacks in a Louisiana Parish, 1865-1876*, 25 *Journal of Social History* 373, 386 n.37 (1991).

9. Equal Justice Initiative, *Lynching in America: Confronting the Legacy of Racial Terror* (2015), <http://www.eji.org/files/EJI%20Lynching%20in%20America%20SUMMARY.pdf>.

10. Vandal, *supra* note 8 at 375, table 3.



versal reasons calls into question whether the entire process is too complex.

There are always voices that say the remedy for a bad reversal rate is to speed up review, but that misunderstands reversal rate, ignores justice, and was tried, and failed, in the 1980s, resulting in all parts of the system working together to create more rigorous and careful rules of review. The Louisiana exoneration rate is more than double the national average, and innocent inmates have spent 3.9 years in solitary confinement for each execution, more than three times the national average. Six of the nine exonerations have come after 10 years (five after 13 years) on death row. True innocence could exist in as many as 10% of these death cases, according to the latest research<sup>11</sup>

Finally, there is consistent racial bias in every metric of black and white death penalty rates, whether measured by death-sentenced case per homicide, by case disposition, by reversal rate, or by victim race. Perhaps the single most shocking element of Louisiana's experience with the death penalty is that no white individual has been executed for killing a black since 1752. Race-of-victim effects point to a 14-to-1 difference in the likelihood of execution if the victim is white rather than black. This difference balloons to 43-to-1 comparing cases with white female victims to black male victims. For white offenders, the odds of execution for killing a black male are zero.

We close with words of Justice Anthony Kennedy from the majority decision of the recent *Obergefell v. Hodges* case in the US Supreme Court:

“The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of

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11. Samuel R. Gross, Barbara O'Brien, Chen Hu, & Edward H. Kennedy, *Rate of false conviction of criminal defendants who are sentenced to death*. PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES, <http://www.pnas.org/content/111/20/7230.abstract>. (The Gross study applies survival analysis statistical techniques developed in medical research to the national exoneration rate of 1.6%, and concludes that, primarily due to the nature of reversals, wherein cases are no longer heavily scrutinized after sentence reduction, the actual innocence rate is conservatively estimated to be 4.1%. A simple extrapolation of this methodology to Louisiana, with its elevated reversal and exoneration rates and starting points, yields a similarly conservative estimate of actual innocence at around 10%.)

freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning. When new insight reveals discord between the Constitution's central protections and a received legal stricture, a claim to liberty must be addressed."<sup>12</sup>

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12. *Obergefell v. Hodges*, 135 S.Ct. 2584, 2598 (2015).