



The Death Penalty in the Age of Mass Incarceration (1990-Present)

By CDPL Staff

In the 1990s, the old forces of racism took a virulent new form: mass incarceration. Politicians competed to varnish their “tough on crime” credentials. They embraced the myth of young, Black “superpredators” and waged the War on Drugs. Thanks in large part to the policies of this period, the United States has the highest incarceration rate in the world.

The death penalty roared back to life, assuming a symbolic role at the apex of this system. In 1992, Presidential candidate Bill Clinton left off campaigning in New Hampshire to preside over the execution of Ricky Ray Rector, a Black man so brain damaged and intellectually disabled that he asked the guards serving his final meal to save dessert so he could eat it the next day.

North Carolina led the death penalty’s resurgence. Its courts adopted the country’s most expansive death penalty rule, requiring prosecutors to seek the death penalty for nearly every first-degree murder. North Carolina’s death sentencing rate soared to one of the nation’s highest, even beating out Texas. At the height of the frenzy, juries handed down as many as thirty-four death sentences in one year, as opposed to no more than one or two per year today.

In some capital cases, jurors have described openly racist deliberations among all-white panels. One juror who sent a Black man to death row used racist epithets and admitted that bigotry was behind his desire to serve on the jury. And in case after case, prosecutors used racist language to entice white juries to vote for death — encouraging them to weave the metaphorical strands of evidence into a “rope” or referring to a defendant as a “big Black bull.” One elected district attorney celebrated death sentences by handing out noose-shaped lapel pins to his staff. Several of the people his office prosecuted in the 1990s remain on death row today.

The wave crested in 2001 after advocates pushed through a [series of reforms](#) intended to support public defense and ensure fair trials, and after the legislature ended the egregious requirement that every aggravated first-degree murder be tried capitally. The N.C. Innocence Inquiry Commission was formed, and a flurry of exonerations began, both on and off death row. Ten people sentenced to death in North Carolina have been exonerated, nine of them men of color. In 2009, the Racial Justice Act, which allowed people on death row to prove their sentences were racially-driven, uncovered statewide evidence that defendants with white victims were two times more likely to be sentenced to death and that Black jurors were systematically excluded.

Despite the changes of the past two decades, North Carolina still claims one of the nation's largest death rows with about 140 people, almost all sentenced in the 1990s. Its residents are disproportionately black and almost exclusively poor. Most are accused of crimes against white victims. Many had all-white juries. And the state continues its fight to execute them.

Rather than face up to the racism exposed by the Racial Justice Act, the legislature repealed it and prosecutors fought to keep the evidence out of court. But in June 2020, the N.C. Supreme Court cleared the way for all of the state's Racial Justice Act claims to finally be heard. The evidence will show that North Carolina's modern death penalty springs from the roots of a racist past.