

Death Penalty Literacy: Teaching D.C. High School Students About Capital Punishment

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Overview of Curriculum Development Methodology

As our Honors Capstone, we have created a curricular unit on the death penalty to be used as part of the Marshall Brennan Constitutional Literacy Project at the American University Washington College of Law. To create this, we did a great deal of research, both primary and secondary. The final product, which will be included in the 2009-2010 teaching manual for the program, reflects a long, but worthwhile, process of revision and learning.

Genesis

Interest

Both of us share a passion for abolition of the death penalty and an interest in spreading knowledge and information about the cause to others. Prior to getting involved in this project, we have each worked on projects to help further this goal.

As an intern, Molly worked as an investigator for the Public Defender Service for the District of Columbia, where she dealt with cases that could potentially carry a capital sentence, if D.C. had a death penalty. She also witnessed firsthand some of the issues with the criminal justice system that we identify in this curriculum, such as racial and gender biases, juvenile status, and police investigative errors.

Molly also served as a teaching assistant for an Honors Colloquium on the death penalty taught at American University by Professor Robert Johnson, her capstone advisor. In this capacity, Molly was able to do a great deal of academic research on the death penalty, particularly on its history.

Amanda's interest in the death penalty began as part of a grassroots movement to help Troy Davis, a current Death Row inmate, for whom there is mounting evidence of innocence. Through this, she was able to understand issues with the criminal justice system, as well as understand the emotional, human elements of the death penalty.

Amanda is also currently working on a book chapter about the problems with the death penalty authored by Professor Richard Stack, her capstone advisor. She is researching the case of Carlos DeLuna, a man who was exonerated posthumously. Through this, Amanda gained a lot of anecdotal information for use in the curriculum. It has also inspired her to learn more about the issue and taught her the importance of knowledge in the death penalty debate. Giving students the ability to make a sound, well-supported argument is one of the main objectives of this curricular unit.

Preliminary Research

After deciding to create the curriculum, we began by looking at the Death Penalty Information Center's existing high school curriculum. We found, however, that this curriculum was not accessible for all needs, particularly those of our target audience—high school-aged D.C. public school students. As an entirely online curriculum, it would not be conducive to being taught in an environment with limited resources and limited access to technology. In addition, it is a lengthy curriculum that may not be easily placed in the context of a pre-existing course.

We had initially considered taking our curriculum directly to the D.C. public schools in hopes that they would put it into their social studies curriculum. We began researching standards of learning and getting contact information for high school administrators when we came across the Marshall-Brennan Constitutional Literacy Project.

The Marshall-Brennan Constitutional Literacy Project

The Marshall-Brennan Constitutional Literacy Project is a program run out of American University's Washington College of Law that gives law students the ability to teach constitutional law in D.C. public schools. The course gives the students a significant amount of flexibility in the way the course is taught—they are given two textbooks to use (Youth Justice in

America and We the Students) and a teaching manual for suggestions. We found that, though Youth Justice in America does have a chapter on the Eighth Amendment, it is relatively short and mainly covers *Roper v. Simmons*—the case that abolished the juvenile death penalty. This seemed like the perfect place for our curriculum to go to expand on the issue.

Research

Primary

Since neither of us had any experience with creating a curriculum, we began the process of creating our capstone by meeting with a series of experts on different aspects of the project.

We began by meeting with Angela Mickalide, Director of Education and Outreach for the Home Safety Council, a Washington, D.C.-based nonprofit organization. Although she didn't know a lot about the death penalty, we wanted to talk to her about the process for developing a curriculum. Our meeting with her actually ended up being even more useful than we'd envisioned, however, because she was able to provide us with a solid baseline of what the "average person" would know about the death penalty. Having both worked so intimately with the issue of capital punishment, it is sometimes easy for us to forget all that we have learned. The simplicity with which we present the issues and the broad scope of the curriculum reflect the result of our meeting with Angela. We also took away a lot of information about how to structure the curriculum from this meeting.

Next we met with Andrew Ferguson, who works for the D.C. Public Defender Service and co-authored one of the books used in the Marshall-Brennan course, Youth Justice in America. In addition to providing us with useful information on the elements of the death penalty discussion that would be most important for students to learn, he also put us directly in contact with the Marshall-Brennan program.

Another one of the co-authors of Youth Justice in America, Maryam Ahranjani, also directs the outreach for the Marshall-Brennan program. She was our third, and last, meeting. The result of our meeting with Maryam is best reflected in the way that the curriculum is specifically tailored to the needs of the program. We created the curricular unit to be flexible enough that it can be taught over a period of 2 to 3 days, depending on the level of depth that the individual instructors want to put into this particular topic.

Our final foray into primary research came in the form of a classroom visit at Wilson High School, where we were able to observe an actual Marshall-Brennan class being taught. This was arguably the best learning experience in designing the curriculum because we were able to get a sense of the feel of the classroom and what worked and what did not. We tried to incorporate those strategies that were successful and avoid those that weren't well received by the students. We saw that the attention span of the students would only allow for only about 20 minutes of lecturing at a time. We also saw that interactive activities that were relatable to the students were best for keeping them interested and enabling them to apply what they'd learned. You will see that our curriculum involves significant student interaction as a result of this experience.

Secondary

We also did a great deal of secondary research in developing the curriculum. As was mentioned previously, the Death Penalty Information Center's online high school curriculum served as a both a guide for format, as well as a source of information and resources. We felt that they did a good job of presenting information in a clear and concise manner and tried to take on that same tone in our own curriculum.

In her experiences as a teaching assistant for the Honors Colloquium, Molly was able to conduct a lot of academic research about the death penalty. The results of this research were a source of much of the information in our curriculum, as well as the background information that guided the curriculum development. We also found the Innocent Project and the Mid-Atlantic Innocence Project (based at the Washington College of Law) websites to be useful sources of facts, as well as the National Youth Justice Alliance website.

Finally, we were able to bring in anecdotes from those death penalty cases that we had worked with individually, such as the Troy Davis case and the Carlos DeLuna case, to provide real illustrations of issues in the death penalty system. We found that, in our own experience, real life illustrations were most compelling and hope that the students will find the same.

The Curriculum

Format

Our final product is a curricular unit package that will be included in the Marshall-Brennan program's teaching manual. It includes a lesson plan for teachers, hypothetical situations and discussion questions for students, accompanying activities and worksheets, as well as suggested media and additional resources for teachers seeking background or supplemental information.

The lesson is designed be taught over a period of 2 to 3 class sessions, as was suggested to us by Maryam in our discussions of what would be best for the Marshall-Brennan program. Topics discussed include: history, methods, pros and cons, and a discussion of issues (including race, socioeconomic status, juvenile status, and wrongful convictions). These topics reflect the needs of the program as expressed to us by Maryam, as well as suggestions from Andrew.

Though the juvenile death penalty was found to be unconstitutional and is, therefore, no longer used, we felt it would be a beneficial discussion topic to the students because of their

proximity to the issue—just a few decades ago, they could have been eligible for such a punishment. We felt that a discussion of race and socioeconomic status would be especially relevant to D.C. public school students because of the demographics of Washington, D.C. We felt that students would respond well to a discussion of gender because of the rivalries that tend to exist between genders at that age.

Stance and Purpose

Though we both favor abolition of the death penalty, the curriculum is designed to be objective. We use a fact-based approach that incorporates real world examples and explores all perspectives. Equal time is given to arguments in favor of and against the death penalty. We believe that explorations of issues within the system need not imply a bias toward abolition, but rather suggest areas upon which the practice could be reformed.

The ultimate purpose of this project is not to leave students with a particular opinion, but rather to leave them with the information and skills to make their own decision on whether they support the policy. We believe that, because of its high-stakes nature, the death penalty is not a policy that we can afford to leave unconsidered. Moreover, learning how to examine an issue from all sides and analyze its merits is a skill that will surely benefit students in their future.

Evaluation

The success of the curriculum will be evaluated in two ways. The first is the final debate. As the last activity in the lesson plan, we have provided students with a scenario where they are asked by President Obama to advise whether or not he should abolish the death penalty. In doing this, students are expected to apply what they have learned and articulate a clear and well-supported policy recommendation. Their ability to do this will be a test of whether the curriculum was successful.

More directly, we have chosen to end our curriculum with a student evaluation form. This form gives students the ability to rate the program on a scale based on whether we've accomplished our stated objectives. We hope to see the feedback and, additionally, that it helps guide future teachers of the most effective ways to carry out the lesson.

Future

We are very pleased that our lesson has already been well received by Maryam and her colleagues at the Marshall-Brennan Constitutional Literacy Project. We have received confirmation that the curriculum will be included in next year's teaching manual and that, time permitting, it will be taught in classrooms this year. We have also been offered the opportunity to teach the program ourselves at a similar program taught at the D.C. Youth Services Center run through the National Youth Justice Alliance.

The process of developing this curriculum has proven to be an amazing learning experience, and we hope that it will benefit others as much as its creation benefited us.

THE DEATH PENALTY IN AMERICA

Description: This unit was created to familiarize students with the death penalty in America and explore different facets of the capital punishment system.

Student Objectives:

1. Students will have a basic understanding of the death penalty system.
2. Students will understand major systemic issues related to the death penalty.
3. Students will be able to articulate the pros and cons of the policy.
4. Students will form their own opinions about the death penalty and be able to justify their own opinions with concrete facts and legal arguments.

Length of Lesson: 2-3 class periods.

Supplies Needed: Chapter 8: Cruel and Unusual Punishment in Youth Justice in America text and materials provided in appendices.

Age Group: 9th-12th grade students.

Overview of Lesson Plan

I. Handout: Quiz on Death Qualification

- Students will take short survey to determine whether they would be eligible to serve on a capital case jury.

II. Introduction to Death Penalty Vocabulary

- Handout: vocabulary worksheet for students to add definitions.

III. Explanation of the capital punishment process

- Discussion question: Does D.C. have the death penalty, and who is eligible?
- Review of history, methods, and process.

IV. Discussion: Juveniles and the Death Penalty

- Review *Roper v. Simmons* and discuss age and culpability.

V. Arguments For and Against the Death Penalty

- Introduce some of the major arguments in the capital punishment debate.

VI. Hypothetical and Discussion of Death Penalty Issues

- Foreshadow the discussion of race, gender, etc. by helping students draw the issues from a hypothetical.

VII. Debate: For v. Against Capital Punishment

- Divide class in half and conduct a debate on the fairness of capital punishment in order to measure students' progress toward unit objectives.

VIII. Appendices

A. Worksheets

- a. "Would You Be Chosen to Sit on A Jury?" Quiz
- b. Death Penalty Vocabulary Worksheet
- c. Death Penalty Vocabulary Master Worksheet
- d. Hypotheticals on Race, Socioeconomic Status, and Gender
- e. Handouts on Race, Socioeconomic Status, and Gender
- f. Flashcards on Race, Socioeconomic Status, and Gender
- g. Evaluation: Death Penalty Unit

B. Suggested Media

C. Curriculum Works Cited

Note:

Instructors can choose sections appropriate for their classes and available classroom time.

However, sections I through IV are designed to give an overview of the essential points of the death penalty, while sections V through VII provide additional information about specific topics and demographics of capital punishment.

I. Handout: Quiz on Death Qualification

To students: Most Americans know nothing about the death penalty process, but if they live in a state that has the death penalty, they may be eligible to serve on a jury for a capital case. If asked, would you sit on a jury in a death penalty case, knowing that you would have to vote on sentencing a defendant to death?

Provide students with the Death Penalty Information Center's quiz on death penalty eligibility.

II. Introduction to Death Penalty Vocabulary

Provide students with a worksheet for recording definitions of key vocabulary (see Appendix A for worksheet and master worksheet). Some definitions can be found in Youth Justice in America, and students should be encouraged to look up definitions during this activity.

III. Explanation of the capital punishment process

Informally explain why it is worthwhile to study the death penalty. Here are some suggested points:

- The death penalty is deeply rooted in world history. People have been put to death for their crimes since ancient times, and executions were public events in ancient Rome and Greece.¹ In the United States, executions have been taking place since the colonies were founded, as early as 1608.²
- In 1972, the U.S. Supreme Court ruled in *Furman v. Georgia* that the death penalty was unconstitutional because it was being unfairly applied. In 1976, the Court reinstated the death penalty in *Gregg v. Georgia*.³
- Since then, over 1100 people, including 22 children under the age of 18, have been executed for their crimes.⁴
- The death penalty issue remains controversial today, as executed individuals are being exonerating and states consider abolishing capital punishment.
- The stakes are highest in capital cases. If found guilty, the defendant loses not only his freedom but also his life.

Ask students: Does D.C. have the death penalty? Use their questions and comments to clarify the status of the capital punishment nationally. Some keys facts are as follows.

- 36 states, the federal government, and the military currently have the death penalty.⁵

¹ Johnson, Robert. Death Work: A Study of the Modern Execution Process. Thompson Wadsworth: United States, 2006. 12.

² "Executions in the U.S. 1608-2002: The Espy File." Death Penalty Information Center. <http://www.deathpenaltyinfo.org/executions-us-1608-2002-espy-file>.

³ Haney, Craig. Death By Design: Capital Punishment as a Social Psychological System. Oxford University Press: New York, 2005. 10-11.

⁴ "Fact Sheet." Death Penalty Information Center. <http://www.deathpenaltyinfo.org/FactSheet.pdf>.

⁵ Ibid.

- 15 states and D.C. do not use capital punishment. D.C. did have a death penalty, but only until 1976; 118 D.C. residents were executed prior to that year.⁶ New Jersey (2007) and New Mexico (2009) recently abolished their death penalty.⁷
- The U.S. is the only country in the Western hemisphere that maintains a death penalty. Internationally, 59 countries maintain a death penalty but only 25 are active in executions. The largest number of executions takes place in China, Iran, and Saudi Arabia, but the U.S. has the fourth highest execution rate in the world.⁸

Ask students: How is a person executed? Use their questions and comments to explain methods of execution. Some key facts are as follows.

- 35 out of 36 states use lethal injection.⁹
- Nebraska's sole method was electrocution, but in February 2008, the State Supreme Court ruled the method unconstitutional because it violated Nebraska's constitutional protection against cruel and unusual punishment. Another method has yet to be named.¹⁰
- Five states authorize the gas chamber but allow lethal injection as an alternative.
- Idaho still uses a firing squad but the condemned may choose lethal injection as well.
- Washington and Delaware use hanging but the condemned may opt for lethal injection.¹¹
- Lethal injection involves 3 injections that shut down the condemned's body.
- Lethal injection appears to observers to be relatively painless but some experts argue that paralysis hides an excruciating death by suffocation.¹²

Explain how a defendant becomes eligible for the death penalty.

- If a crime is punishable by capital punishment in that state, the defendant will have a two-part trial.
- Before any jury trial begins, lawyers for both sides choose the jury in a process called voir dire. During voir dire in a capital case, lawyers must choose jury members who feel that they are capable of imposing the death penalty; this process of discovering eligible capital jurors is called death qualification.¹³
- The defendant then undergoes the guilt-innocence part of the trial. If at this stage, the defendant is found guilty beyond a reasonable doubt of any of the factors that define a capital crime, he is eligible to receive the death penalty.
- The second part of the trial is the life-death phase. Here, the jury decides whether or not the defendant gets the death penalty.¹⁴

⁶ "State by State Information." Death Penalty Information Center. <http://www.deathpenaltyinfo.org/state>.

⁷ "Fact Sheet." Death Penalty Information Center.

⁸ "Death Penalty Statistics." Amnesty International USA. <http://www.amnestyusa.org/death-penalty/international-death-penalty/death-penalty-statistics/page.do?id=1011348>.

⁹ Ibid.

¹⁰ Ibid, and Liptak, Adam. "Nebraska Supreme Court Outlaws Electric Chair." *The New York Times*. 8 Feb. 2008. <http://www.nytimes.com/2008/02/08/us/08cnd-penalty.html>.

¹¹ "Descriptions of Execution Methods." Death Penalty Information Center. <http://www.deathpenaltyinfo.org/descriptions-execution-methods>.

¹² Johnson. 46.

¹³ Sundby, Scott. *A Life and Death Decision: A Jury Weighs the Death Penalty*. Palgrave MacMillan: New York, 2005. 22.

¹⁴ Ibid. 9-11.

IV. Discussion: Juveniles and the Death Penalty

- Juvenile executions began in colonial times and continued until 2005.
- In 1988, the Supreme Court found that executions of people under 16 violate the Eighth Amendment ban on cruel and unusual punishment, but the Court overruled itself the next year by upholding a law that allowed the execution of 16- and 17-year-olds. In 2002, the Court held that a mentally retarded person could not be executed, and the case against the juvenile death penalty was strengthened.¹⁵
- Between 1976 and its abolition in 2002, 22 defendants were executed under the juvenile death penalty.¹⁶
- In 2002 in *Roper v. Simmons*, the U.S. Supreme Court outlawed the juvenile death penalty.

Ask students: Do you think juveniles and adults should receive the same punishment, like the death penalty, for the same crimes? Are juveniles and adults equally responsible for their actions?

Using the summary of *Roper v. Simmons* on page 268 in Youth Justice, explain the major arguments against the juvenile death penalty, as stated by the U.S. Supreme Court. Key aspects of the decision, contained in Section III of the opinion, were as follows.

- Because of the differences between juveniles under 18 and adults, juveniles are not among the worst offenders.
 - Juveniles have a “lack of maturity and underdeveloped sense of responsibility.”
 - Juveniles experience greater “vulnerability to negative influences and outside pressures.”
 - “The character of a juvenile is not as well-formed as that of an adult.”
- These differences make it cruel and unusual punishment to execute a juvenile.
- Because of these differences, juveniles are less likely to be deterred, to see the death penalty as an example of why they should not commit a crime.

Stress that the justices had similar questions about the juvenile death penalty, reflected in the case’s dissent.

V. Arguments For and Against the Death Penalty

Engage the whole class in producing a list of reasons for and against the death penalty, providing factual support for each point; some key facts and statistics have been provided. If some of the reasons listed have not been mentioned by the end of the discussion, introduce them.

What are some arguments for having a death penalty?

- Punishment and deterrence
 - Only the most “cruel and heinous crimes” are eligible for the death penalty. Those who commit these types of crimes deserve the harshest punishment available—death.

¹⁵ Ahranjani, Maryam, Andrew G. Ferguson, and Jamin B. Raskin. Youth Justice in America. CQ Press: Washington, D.C., 2005. 248-260.

¹⁶ Ibid. 248-260.

- “Any lesser punishment would undermine the value society places on protecting lives.”¹⁷
- The seriousness of this punishment discourages others from committing similar crimes and therefore reduces violent crime overall.
- Retribution
 - If someone takes a life, that person’s life should be taken. The Bible calls this “an eye for an eye.”
- Public safety/recidivism prevention
 - “Since society has the highest interest in preventing murder, it should use the strongest punishment available to deter murder, and that is the death penalty.”¹⁸
 - The death penalty is a form of incapacitation. By killing those individuals who commit murder, we are preventing them from murdering again—either in prison or in society, should they be released.¹⁹
 - Some types of offenders, like sociopaths and child molesters, have high rates of recidivism, and research has found that sex offenders may never be fully rehabilitated. If these offenders are unlikely to stop offending and posing a safety risk, they should not be alive.
- Benefit to victims’ families
 - Executing a murderer brings closure to the victims’ families²⁰
 - The family of a victim may feel the need for retribution
- Public support
 - A Gallup Poll taken in May 2006 showed that overall support of the death penalty was 65%.²¹

What are some arguments against the death penalty?

- Risk of error/permanence
 - The death penalty is an “irrevocable sentence”—once an execution has occurred, there is no way to take back the punishment if it is later discovered that a mistake was made.
 - At least 121 people have been released from death row since 1921 because additional investigation proved their innocence.
 - For every 8 people executed, one person is found on death row who should not have been convicted—this represents a very high level of error.
 - DNA testing, which provides conclusive evidence, is a relatively recent technology, and cannot be used in all circumstances.²²
- Cruel and unusual punishment
 - Taking a life is a disproportionate punishment. The U.S. executes only a small percentage of those convicted of murder.²³

¹⁷ “Retribution (In Support of the Death Penalty).” Death Penalty Information Center. <http://deathpenaltycurriculum.org/teacher/c/about/arguments/argument2a.htm>.

¹⁸ “Deterrence (In Support of the Death Penalty).” Death Penalty Information Center. <http://deathpenaltycurriculum.org/teacher/c/about/arguments/argument1a.htm>.

¹⁹ Ibid.

²⁰ “Retribution (In Support of the Death Penalty).” Death Penalty Information Center.

²¹ “Fact Sheet.” Death Penalty Information Center.

²² “Innocence (In Opposition to the Death Penalty).” Death Penalty Information Center. <http://deathpenaltycurriculum.org/teacher/c/about/arguments/argument3a.htm>.

- Additionally, many condemned inmates spend several years on death row, and some experts argue that the emotional pain and loss of dignity inherent in waiting for an indefinite time of death constitutes cruelty.²⁴
- Cost and time consumption
 - “In California, taxpayers have paid more than \$250 million for each of the state’s executions.”
 - “The death penalty costs North Carolina \$2.16 million per execution *over* the costs of sentencing murderers to life imprisonment. The majority of those costs occur at the trial level.”
 - “In Texas, a death penalty case costs an average of \$2.3 million, about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years.”²⁵
- Religious/moral opposition (The State can’t play God.)
 - A 2005 Zogby poll showed that the number of Catholics who strongly support the death penalty has halved since 2001—from 40% to 20%.
 - “Regular churchgoers are less likely to support the death penalty than those who attend infrequently.”
 - The reason most cited for religious or moral opposition is “respect for life.”²⁶
- Systemic bias and errors
 - “A recent study by Columbia University Law School found that two thirds of all capital trials contained serious errors. When the cases were retried, over 80% of the defendants were not sentenced to death and 7% were completely acquitted.”²⁷
 - Inflammatory nature of capital crimes tends to create tunnel vision, paying less attention to potential errors.
- Does not serve as a deterrent
 - In a survey of the former and present presidents of the country's top academic criminological societies, 84% reject the idea of capital punishment as a form of deterrence.
 - A survey of police chiefs placed the death penalty as the least most effective means of reducing violent crimes.²⁸
- Does not repay victims or contribute to the goal of reparation
 - Executing a killer does not change the fact that a murder has occurred and cannot bring back the individual who was killed.
 - “Many victims’ families denounce the use of the death penalty. Using an execution to try to right the wrong of their loss is an affront to them and only causes more pain.”²⁹
 - The 2006 FBI Uniform Crime report showed that the most executions occurred in the South, yet the crime rate remains higher than the North, where fewer executions occur.³⁰

²³ "Retribution (In Opposition to the Death Penalty)." Death Penalty Information Center. <http://deathpenaltycurriculum.org/teacher/c/about/arguments/argument2b.htm>.

²⁴ Johnson, 61-120.

²⁵ “Fact Sheet.” Death Penalty Information Center.

²⁶ “National Polls and Studies.” Death Penalty Information Center. <http://www.deathpenaltyinfo.org/national-polls-and-studies#Zogby0001>.

²⁷ “Innocence (In Opposition to the Death Penalty).” Death Penalty Information Center.

²⁸ “Fact Sheet.” Death Penalty Information Center.

²⁹ “Retribution (In Opposition to the Death Penalty).” Death Penalty Information Center.

- Effect on offenders' families
 - A state execution causes the families of victims to lose trust in the state or the government.
 - Families struggle with planning for a scheduled death (both emotionally as well as practically, such as with funeral arrangements).
 - Families are often victimized or ostracized for their relationship with the executed individual; they do not receive the same attention as others facing a "traumatic loss." Additionally, relationships with those outside of the family are often harmed.³¹
- Viable alternative: life without parole
 - A Gallup Poll taken in May 2006 found that 48% of people preferred life without parole as a sentencing alternative to the death penalty.³²
 - Life without parole may be considered death by incarceration, as convicted individuals give up their liberty for the rest of their lives and wait for death in prison.³³

VI. Hypothetical and Discussion of Death Penalty Issues

For three of the following issues, hypothetical situations A and B, in boxes, are provided. Students or instructors may read the hypotheticals aloud to initiate discussions of the issues, which are more fully explained with the key points listed below. The appendix contains the hypotheticals in a worksheet that can be cut up and distribute to students. Key points are also provided for the fourth issue, wrongful convictions.

A. Race

A. Person A is an African American male from Silver Spring, Maryland. He is accused of killing a white businessman in the parking lot of the Silver Spring Metro station after hours. Person A is tried before a jury of 10 whites and 2 blacks. He is found guilty and convicted of capital murder.

B. Person B is a white male from Silver Spring, Maryland. He is accused of killing a homeless, African American male in the parking lot of the Silver Spring Metro station after hours. Person B is tried before a jury of 10 whites and 2 blacks. He is found guilty and sentenced to 30 years in prison.

- A study of death penalty sentencing conducted by the U.S. General Accounting Office found that in 82% of cases, race of the victim influenced the likelihood of an offender receiving the death penalty. Those who murder whites are far more likely to receive the death penalty than those who murder blacks.
- Since 1976, there have been 15 executions of whites who have murdered blacks; there have been 235 executions of blacks who have murdered whites.³⁴
- The current death row population by race:³⁵

³⁰ "Fact Sheet." Death Penalty Information Center.

³¹ Murder Victims' Families for Human Rights. <http://www.murdervictimsfamilies.org>.

³² "Fact Sheet." Death Penalty Information Center.

³³ Johnson, Robert and McGunigall-Smith. "Life Without Parole, American's Other Death Penalty." *The Prison Journal*, Vol. 88, No. 2, pp. 328-346 (2008).

³⁴ "Race of Death Row Inmates Executed Since 1976." Death Penalty Information Center. <http://www.deathpenaltyinfo.org/race-death-row-inmates-executed-1976#defend>.

³⁵ Ibid.

Black 1,379 (41.7%)

Hispanic 364 (11%)

White 1,489 (45%)

Other 77 (2.3%)

- In 1987 in *McCleskey v. Kemp*, the defense presented a study that showed that black defendants charged with killing white victims were the most likely group to receive the death penalty. The U.S. Supreme Court refused to overturn McCleskey's death sentence, contending that the death penalty was still constitutional.³⁶
- When two or more black males on the jury, the chances of a death sentence were reduced to 37.5%. In a black-on-white murder case, the presence of five or more white males on the jury increased death sentence chances to 70.7%.³⁷
- Though blacks constitute only about 12% of the population, 40% of those executed have been black.
- In 1994, 89% of the death sentences carried out involved white victims, even though 50% of the homicides had black victims.³⁸

B. Socioeconomic Status

A. Person A is an African American on trial for murder. He lives in a single bedroom apartment in a poor area of Wheaton, Maryland. At the time of his arrest, he was out of work, though he never had a steady stream of employment. Person A cannot afford to hire a lawyer, so he is given court appointed counsel. His lawyer graduated from law school two years prior and is arguing his first capital murder case. He is found guilty and convicted of capital murder.

B. Person B is an African American on trial for murder. He lives in a large, single family home in one of the richest neighborhoods in Potomac, MD. He works as the president of one of the busiest branches of Chevy Chase Bank in Maryland. His neighbor is a lawyer for the top Washington, D.C. law firm and offers to represent him in the case. He puts his best, most experienced lawyer on the case. Person B is found to be innocent.

- Quality of representation is an important factor in determining whether a defendant will receive the death penalty; many defendants in capital cases must use court appointed attorneys because they cannot afford to hire an attorney. This quality representation is the best defense systemic errors in the justice system.
- Appointed attorneys are generally overworked and inexperienced and, thus, cannot give cases the time or attention necessary for a successful outcome. Though D.C. does not have the death penalty, the Public Defender Service for D.C. is renowned for its quality representation.
- "An examination of 461 capital cases by *The Dallas Morning News* found that 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."

³⁶ "Chattahoochee Judicial District: Buckle of the Death Belt: The Death Penalty in Microcosm." Death Penalty Information Center. <http://www.deathpenaltyinfo.org/chattahoochee-judicial-district-buckle-death-belt-death-penalty-microcosm>. Also, "McCleskey v. Kemp, 481 U.S. 279 (1987), U.S. Supreme Court Case Summary & Oral Argument." The Oyez Project. http://www.oyez.org/cases/1980-1989/1986/1986_84_6811.

³⁷ Sundby, 203.

³⁸ "Racial Disparities in Federal Death Penalty Prosecutions 1988-1994 I." Death Penalty Information Center. <http://www.deathpenaltyinfo.org/racial-disparities-federal-death-penalty-prosecutions-1988-1994>.

- “According to an investigation by *The Chicago Tribune*, 12% of those sentenced to death from 1976-1999 were represented by, ‘an attorney who had been, or was later, disbarred or suspended.’”³⁹

C. Gender

A. Person A is a currently unemployed female who lives in a low-income area of Maryland. She is on trial for killing her children. She is found guilty and given with the death penalty.

B. Person B is a currently unemployed male who lives in a low-income area of Maryland. He is on trial for killing his children. He is found guilty and sentenced to life in prison.

- Women make up 2% of death row inmates nationally.⁴⁰
- Men, 98% of death row inmates, comprise roughly 73 % of people executed since 1608.⁴¹
- Only one woman has been executed since 1976.⁴²
- Women are a smaller part of the felony criminal population nationally.

D. Wrongful Convictions

- Witness misidentification
 - Studies have shown that this is most likely to occur in cases of “cross-racial identification,” where the victim is identifying someone of another race.⁴³
 - There are two types of variables, which influence witness misidentification—estimator variables and system variables.
 - Estimator variables include: distance, amount of fear felt by the witness, and the race of the witness and the suspect.⁴⁴
 - System variables include biases in police lineups and suggestive questioning by the police of witnesses.⁴⁵
- False Confessions
 - False confessions may be caused by a variety of factors including: duress, coercion, intoxication, diminished capacity, mental impairment, ignorance of the law, fear of violence, the actual infliction of harm, the threat of a harsh sentence, and/or misunderstanding the situation
 - Confessions from juveniles are often unreliable—they can be easily manipulated and may not fully understand the situation.
 - “Mentally capable adults also give false confessions due to a variety of factors like the length of interrogation, exhaustion or a belief that they can be released after confessing and prove their innocence later.”⁴⁶
- Police investigative errors

³⁹ "Death Penalty Representation." Death Penalty Information Center. <http://www.deathpenaltyinfo.org/death-penalty-representation>.

⁴⁰ Johnson. 86.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Stack, Richard. *Dead Wrong: Violence, Vengeance, and the Victims of Capital Punishment*. Praeger Publishers: Connecticut, 2006. 84.

⁴⁴ Ibid. 87.

⁴⁵ Ibid. 88

⁴⁶ "Understand the Causes: False Confessions." The Innocence Project. <http://www.innocenceproject.org/understand/False-Confessions.php>.

- The adversarial nature of the justice system may inspire winning at all costs to the detriment of investigative accuracy and integrity.
- Research on this issue is largely anecdotal, and statistics on police investigative errors are limited for many reasons. Errors may not be discovered and/or recorded as such during the investigation, and it is difficult to quantify the instances in which investigative techniques are sound or flawed.
- Example: In the case of Carlos DeLuna, a Hispanic man in Texas who received the death penalty for murdering a gas station attendant, the gas station convenience store where the murder took place was cleaned and reopened one hour after the murder took place. Several pieces of evidence seen in photographs were not collected and a bloody shoeprint was cleaned up before it could be analyzed.⁴⁷
- Example: In both the Troy Davis case and the Carlos DeLuna case, other possible suspects were not investigated, despite their plausibility and the fact that their names had been brought to police on multiple occasions.⁴⁸
- Physical evidence testing
 - A growing body of literature documents tendencies of crime laboratory employees to improperly and unethically see themselves as advocates for one party to litigation and invoke measures that distort their 'scientific' findings.⁴⁹
- Inadequate representation and trial errors
 - Appointed lawyers often lack the skill and resources to properly represent their client⁵⁰
 - One study shows that 37% of reversals of convictions were due to inadequate representation⁵¹
- Jury issues
 - Those individuals who do not support the death penalty or are reluctant to use it may legally be disqualified from participating on a jury.⁵²

VII. Debate: For v. Against Capital Punishment

To measure students' progress toward the unit objectives, conduct a debate about capital punishment by posing the follow hypothetical. Facilitate a debate between the two groups, reminding them of the pros/cons discussed earlier if necessary. Encourage students to incorporate information about the history and disproportionately effected groups.

⁴⁷ "Carlos DeLuna: Did This Man Die for a Phantom's Crime?" National Coalition to Abolish the Death Penalty (NCADP).
http://www.democracyinaction.org/dia/organizationsORG/ncadp/content.jsp?content_KEY=2490&t=Innocent%20And%20Executed%20Section.dwt.

⁴⁸ Ibid.

⁴⁹ Stack. 228.

⁵⁰ Ibid. 230.

⁵¹ Ibid. 230.

⁵² Conrad, Clay. "'Are You 'Death Qualified?'" The Cato Institute.
http://www.cato.org/pub_display.php?pub_id=4625.

President Obama is trying to decide whether to abolish the death penalty in the United States, and he asked D.C. high school students to serve as his advisers on this issue. In a group, present your arguments, supported by facts when possible, to the President.

Master Copy: “Would You Be Chosen to Sit on A Jury?” Quiz⁵³

The following quiz gauges students’ opinions on the death penalty while segueing into a discussion of death qualification and the capital punishment process. It can be handed out as a worksheet or completed verbally with class polling.

Quiz answers:

A. You would not be permitted to serve on a real jury.

Although there is nothing wrong with your reply that you would always vote for the death penalty, the law requires that a jury in a death penalty case be made up of people who are open to giving a sentence other than death in at least some cases.

B. You might not be permitted to serve on a real jury.

Although there is nothing wrong with your reply that you are uncertain of whether you could impose a life sentence, the defense attorney would probably argue that since you lean towards the death penalty in all cases, you would not make a decision on the facts but upon your personal belief in the death penalty and you should be excluded from the jury by the judge. On the other hand, the prosecutor in the case would likely argue that you would be able to decide the sentence by listening to both sides since you have not finally made up your mind. The prosecutor would probably want you included on the jury. Both the prosecutor and the defense attorney would probably ask you further questions to see how deep your reservations about a life sentence go.

C. You would have a good chance at serving on a jury.

Your answer indicates that you would likely be a person who would consider all the factors regarding the severity of the crime and the responsibility of the defendant before deciding on whether a death sentence is appropriate. This does not mean that your position is the "correct" one, but only that you could serve as a juror in this special kind of case.

I would be willing to consider a sentence of death, but it would be very hard for me to vote for death.

D. You might not be permitted to serve on a real jury.

Although there is nothing wrong with your reply that you are uncertain of whether you could impose a death sentence, the prosecutor in the case would likely argue that you would not be able to decide on the sentence by listening to both sides, but instead would be making your decision based on your doubts about the death penalty. The prosecutor would probably want you excluded from the jury by the judge. On the other hand, the defense attorney would probably argue that since you are not necessarily opposed to the death penalty in all cases, you could impose it in some cases, and you should be allowed to serve on the jury. Both the prosecutor and the defense attorney would probably ask you further questions to see how deep your reservations about the death penalty go.

E. You would not be permitted to serve on a real jury.

⁵³ "Would You Be Chosen to Serve on a Jury?" Death Penalty Information Center.
<http://deathpenaltycurriculum.org/teacher/c/courtroom/jury/question.htm>.

Although there is nothing wrong with your reply that you would never vote for the death penalty, the law requires that a jury in a death penalty case be made up of people who are open to giving a death sentence in at least some cases.

“Would You Be Chosen to Sit on A Jury?”⁵⁴

A death penalty statute has been enacted in your state. You have been summoned for jury duty in a death penalty case. In order to determine whether you are qualified to serve on the jury, the judge will ask you about your views regarding the death penalty.

If the defendant is found guilty of capital murder, which makes him or her eligible for a death sentence, what would you do?

Please read the five possible answers carefully before choosing one. Indicate which of the following views is closest to your own.

A. I would always vote for a death sentence.

B. I would consider a sentence of life without possibility of parole, a sentence of life with possibility of parole after 30 years, or a sentence of death, but it would be very hard for me to vote for a sentence other than death.

C. I would be open to consider voting for death, or for life without possibility of parole, or for life with possibility of parole after 30 years.

D. I would be willing to consider a sentence of death, but it would be very hard for me to vote for death.

E. I would never be able to vote for a sentence of death.

⁵⁴ "Would You Be Chosen to Serve on a Jury?" Death Penalty Information Center.
<http://deathpenaltycurriculum.org/teacher/c/courtroom/jury/question.htm>.

Name _____

Marshall-Brennan Constitutional Literacy

Vocabulary

Capital punishment: _____

Sentencing: _____

Appeal: _____

Recidivism: _____

Eighth Amendment: _____

Retribution: _____

Deterrence: _____

Exoneration: _____

Death qualification: _____

Name _____
Marshall-Brennan Constitutional Literacy Project

Master Worksheet: Vocabulary

- **Capital punishment:** Punishment by death for a crime.
- **Capital:** Punishable by death.
- **Sentencing:** The judicial determination of the punishment to be inflicted on a convicted criminal.
- **Appeal:** An application or proceeding for review by a higher court.
- **Recidivism:** The chronic tendency toward repetition of criminal behavior patterns.
- **Eighth Amendment:** Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
- **Retribution:** Punishment; “paying them back by matching every offense with a punishment of equal severity and weight.
- **Deterrence:** Preventing other people from following offenders on a delinquent path.
- **Exoneration:** To free from guilt or blame.
- **Death qualification:** A screening process that determines which members of a pool of eligible jurors are “fit to serve” on capital cases. Jurors in capital cases must publicly state that they would be willing to impose the death penalty.

Race

1. a. Person A is an African American male from Silver Spring, Maryland. He is accused of killing a white businessman in the parking lot of the Silver Spring Metro station after hours. Person A is tried before a jury of 10 whites and 2 blacks. He is found guilty and convicted of capital murder.

1. b. Person B is a white male from Silver Spring, Maryland. He is accused of killing a homeless, African American male in the parking lot of the Silver Spring Metro station after hours. Person B is tried before a jury of 10 whites and 2 blacks. He is found guilty and sentenced to 30 years in prison.

Socioeconomic Status

2. a. Person A is an African American on trial for murder. He lives in a single bedroom apartment in a poor area of Wheaton, Maryland. At the time of his arrest, he was out of work, though he never had a steady stream of employment. Person A cannot afford to hire a lawyer, so he is given court appointed counsel. His lawyer graduated from law school two years prior and is arguing his first capital murder case. He is found guilty and convicted of capital murder.

2. b. Person B is an African American on trial for murder. He lives in a large, single family home in one of the richest neighborhoods in Potomac, MD. He works as the president of one of the busiest branches of Chevy Chase Bank in Maryland. His neighbor is a lawyer for the top Washington, D.C. law firm and offers to represent him in the case. He puts his best, most experienced lawyer on the case. Person B is found to be innocent.

Gender

Person A is a currently unemployed female who lives in a low-income area of Maryland. She is on trial for killing her children. She is found guilty and given with the death penalty.

Person B is a currently unemployed male who lives in a low-income area of Maryland. He is on trial for killing his children. He is found guilty and sentenced to life in prison.

Since 1976, there have been 15 executions of whites who have murdered blacks; there have been 235 executions of blacks who have murdered whites.

The death row population is 41.7% Black, 11% Hispanic, and 45% White.

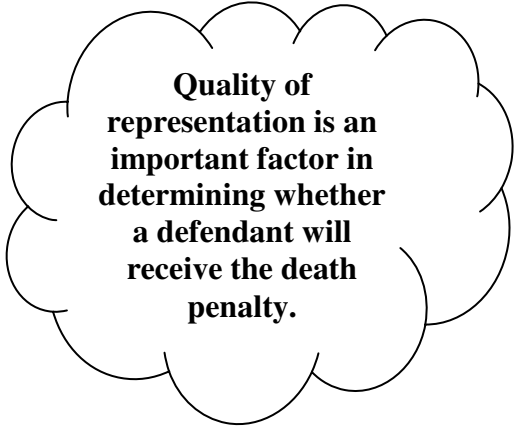
In 82% of cases, race of the victim influences the likelihood of an offender receiving the death penalty.

Capital Punishment and Race

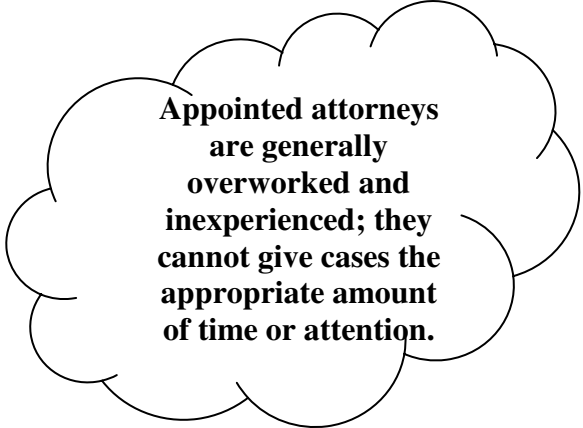
In 1994, 89% of the death sentences carried out involved white victims, even though 50% of the homicides had black victims.

With two or more blacks on the jury, the chances of a death sentence go down dramatically.

Though blacks constitute only about 12% of the population, 40% of those executed have been black.



Quality of representation is an important factor in determining whether a defendant will receive the death penalty.



Appointed attorneys are generally overworked and inexperienced; they cannot give cases the appropriate amount of time or attention.

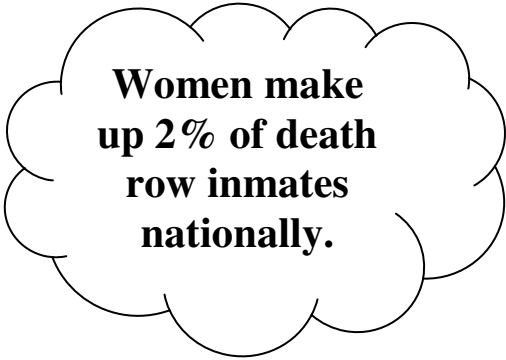


Capital Punishment and Socioeconomic Status

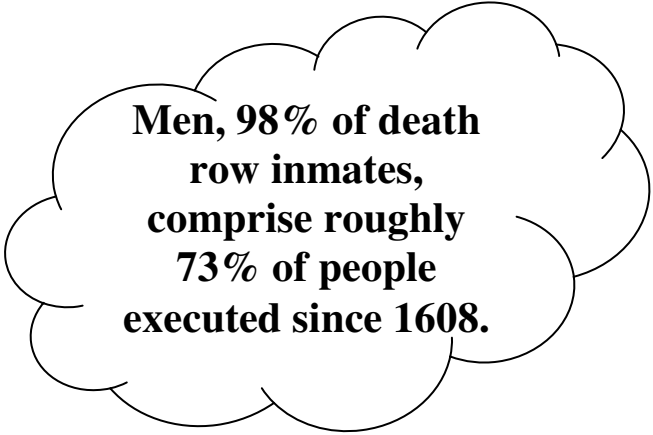
According to an investigation by *The Chicago Tribune*, 12% of those sentenced to death from 1976-1999 were represented by, 'an attorney who had been, or was later, disbarred or suspended.'



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.



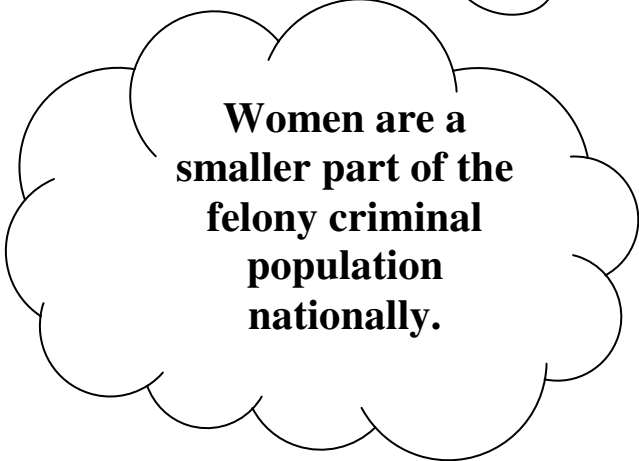
Women make up 2% of death row inmates nationally.




Men, 98% of death row inmates, comprise roughly 73% of people executed since 1608.



Capital Punishment and Gender



Women are a smaller part of the felony criminal population nationally.



Only one woman has been executed since 1976.

<p>Since 1976, there have been 15 executions of whites who have murdered blacks; there have been 235 executions of blacks who have murdered whites.</p>	<p>In 82% of cases, race of the victim influences the likelihood of an offender receiving the death penalty.</p>
<p>With two or more blacks on the jury, the chances of a death sentence go down dramatically.</p>	<p>Though blacks constitute only about 12% of the population, 40% of those executed have been black.</p>

<p>In 1994, 89% of the death sentences carried out involved white victims, even though 50% of the homicides had black victims.</p>	<p>The death row population is 41.7% black; 11% Hispanic; and 45% white.</p>
<p>Quality of representation is an important factor in determining whether a defendant will receive the death penalty.</p>	<p>Appointed attorneys are generally overworked and inexperienced; they cannot give cases the appropriate amount of time or attention.</p>

Women make up 2% of death row inmates nationally.	Men, 98% of death row inmates, comprise roughly 73 % of people executed since 1608.
Women are a smaller part of the felony criminal population nationally.	Only one woman has been executed since 1976.

Evaluation: Death Penalty Unit

1.) I feel that I know more about the death penalty after taking this course than I did before I took it.

Strongly agree Agree Disagree Strongly disagree

2.) What was your initial position on the death penalty? (*circle one*)

Support Oppose No opinion Don't want to say

3.) This course made me reevaluate my position on the death penalty. (*circle one*)

Strongly agree Agree Disagree Strongly disagree

4.) Did your position change?

Yes No

If so, how?

5.) I feel that I can make a strong argument in support of my position. (*circle one*)

Strongly agree Agree Disagree Strongly disagree

6.) Do you have any other comments about either things that you liked about the curriculum or things that could be improved upon?

Appendix B: Suggested Resources and Media

The following list contains a brief sampling of suggested background resources for instructors and media for use in the classroom. Additionally, the Death Penalty Information Center provides thorough lists of books, academic articles, and media resources on its website (www.deathpenaltyinfo.org).

Because the capital punishment debate is so active, news stories are frequently available on the subject. Incorporating recent news articles into your lesson may help students understand the current, relevant nature of the death penalty.

Books

- A Life and Death Decision: A Jury Weighs the Death Penalty. Scott Sundby. Palgrave MacMillan: New York, 2005.
- Capital Punishment: A Balanced Examination. Evan J. Mandery. Jones and Bartlett: Boston, 2005.
- Death By Design: Capital Punishment as a Social Psychological System. Craig Haney. Oxford University Press: New York, 2005.
- Dead Wrong: Violence, Vengeance, and the Victims of Capital Punishment. Richard Stack. Praeger Publishers: Connecticut, 2006.
- Death Work: A Study of the Modern Execution Process. Robert Johnson. Thompson Wadsworth: United States, 2006.
- Equal Justice and the Death Penalty: A Legal and Empirical Analysis. David C. Baldus, George Woodworth, Charles A. Pulaski. University Press of New England: Dartmouth, New Hampshire, 1990.

Academic Articles

- “Life Without Parole, America’s Other Death Penalty.” Robert Johnson and Sandra McGunigall-Smith. *The Prison Journal*, Vol. 88, No. 2, pp. 328-346 (2008). (available through Google Scholar)
- “Why Do White Americans Support the Death Penalty?” Joe Soss, Laura Langbein and Alan R. Metelko. *The Journal of Politics*, 65, pp 397-421 (2008). (available through Google Scholar)

Media:

- *Dead Man Walking*. Clips, including parts of the execution scene, are available on YouTube.
- MTV’s anti-death penalty public service announcement (available on YouTube): <http://www.youtube.com/profile?user=DeathPenaltyInfoCntr&view=videos>.
- The Death Penalty Information Center offers multimedia resources and links to other capital punishment organizations’ websites. <http://www.deathpenaltyinfo.org/multimedia-resources-death-penalty>

- SoundPortraits.org, an independent production company, produces radio documentaries about “men and women surviving in the margins.” The website has several prison and capital punishment-theme documentaries and oral histories, including those of condemned prisoners.

www.soundportraits.org

Appendix C: Curriculum Works Cited

Ahranjani, Maryam, Andrew G. Ferguson, and Jamin B. Raskin. Youth Justice in America. CQ Press: Washington, D.C., 2005.

"Carlos DeLuna: Did This Man Die for a Phantom's Crime?" National Coalition to Abolish the Death Penalty (NCADP).
http://www.democracyinaction.org/dia/organizationsORG/ncadp/content.jsp?content_KEY=2490&t=Innocent%20And%20Executed%20Section.dwt.

"Chattahoochee Judicial District: Buckle of the Death Belt: The Death Penalty in Microcosm." Death Penalty Information Center. <http://www.deathpenaltyinfo.org/chattahoochee-judicial-district-buckle-death-belt-death-penalty-microcosm>.

Conrad, Clay. "'Are You 'Death Qualified?'" The Cato Institute.
http://www.cato.org/pub_display.php?pub_id=4625.

"Death Penalty Representation." Death Penalty Information Center.
<http://www.deathpenaltyinfo.org/death-penalty-representation>.

"Death Penalty Statistics." Amnesty International USA. <http://www.amnestyusa.org/death-penalty/international-death-penalty/death-penalty-statistics/page.do?id=1011348>.

"Descriptions of Execution Methods." Death Penalty Information Center.
<http://www.deathpenaltyinfo.org/descriptions-execution-methods>.

"Deterrence (In Support of the Death Penalty)." Death Penalty Information Center.
<http://deathpenaltycurriculum.org/teacher/c/about/arguments/argument1a.htm>.

"Executions in the U.S. 1608-2002: The Espy File." Death Penalty Information Center.
<http://www.deathpenaltyinfo.org/executions-us-1608-2002-espy-file>.

"Fact Sheet." Death Penalty Information Center.
<http://www.deathpenaltyinfo.org/FactSheet.pdf>.

Haney, Craig. Death By Design: Capital Punishment as a Social Psychological System. Oxford University Press: New York, 2005.

"Innocence (In Opposition to the Death Penalty)." Death Penalty Information Center.
<http://deathpenaltycurriculum.org/teacher/c/about/arguments/argument3a.htm>.

Johnson, Robert. Death Work: A Study of the Modern Execution Process. Thompson Wadsworth: United States, 2006.

Johnson, Robert and McGunigall-Smith. "Life Without Parole, American's Other Death Penalty." *The Prison Journal*, Vol. 88, No. 2, pp. 328-346 (2008).

Liptak, Adam. "Nebraska Supreme Court Outlaws Electric Chair." *The New York Times*. 8 Feb. 2008. <http://www.nytimes.com/2008/02/08/us/08cnd-penalty.html>.

"McCleskey v. Kemp, 481 U.S. 279 (1987), U.S. Supreme Court Case Summary & Oral Argument." The Oyez Project. http://www.oyez.org/cases/1980-1989/1986/1986_84_6811.

Murder Victims' Families for Human Rights. <http://www.murdervictimsfamilies.org>.

"National Polls and Studies." Death Penalty Information Center. <http://www.deathpenaltyinfo.org/national-polls-and-studies#Zogby0001>.

"Race of Death Row Inmates Executed Since 1976." Death Penalty Information Center. <http://www.deathpenaltyinfo.org/race-death-row-inmates-executed-1976#defend>.

"Racial Disparities in Federal Death Penalty Prosecutions 1988-1994 I." Death Penalty Information Center. <http://www.deathpenaltyinfo.org/racial-disparities-federal-death-penalty-prosecutions-1988-1994>.

"Retribution (In Opposition to the Death Penalty)." Death Penalty Information Center. <http://deathpenaltycurriculum.org/teacher/c/about/arguments/argument2b.htm>.

"Retribution (In Support of the Death Penalty)." Death Penalty Information Center. <http://deathpenaltycurriculum.org/teacher/c/about/arguments/argument2a.htm>.

Stack, Richard. Dead Wrong: Violence, Vengeance, and the Victims of Capital Punishment. Praeger Publishers: Connecticut, 2006.

"State by State Information." Death Penalty Information Center. <http://www.deathpenaltyinfo.org/state>.

Sundby, Scott. A Life and Death Decision: A Jury Weighs the Death Penalty. Palgrave McMillan: New York, 2005.

"Understand the Causes: False Confessions." The Innocence Project. <http://www.innocenceproject.org/understand/False-Confessions.php>.

"Would You Be Chosen to Serve on a Jury?" Death Penalty Information Center. <http://deathpenaltycurriculum.org/teacher/c/courtroom/jury/question.htm>.