

# **RACE AND CAPITAL PUNISHMENT: The Need for a Racial Justice Act in South Carolina**

A Report by  
The Center for Capital Litigation



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## **I. Introduction**

The Center for Capital Litigation is a non-profit organization dedicated to promoting a fair and just criminal justice system for indigent defendants facing the death penalty in South Carolina. In America – and, in South Carolina specifically – administration of the death penalty is historically and currently plagued by racial discrimination. A vast body of research, compiled by social scientists and legal researchers over the last four decades, shows that race invariably influences the outcome of capital sentencing decisions. Governing institutions have largely ignored this egregious problem. No one should be satisfied with racial bias in death sentencing; South Carolina should act now to address racial discrimination in capital sentencing in this state.

This report explains the reasons why South Carolina should adopt a Racial Justice Act, which would prevent the State from seeking or carrying out a death sentence in any case in which the defendant shows that race was the decision-makers' basis for seeking or imposing death as a penalty.<sup>1</sup> Part II of this report provides a brief account of the long and tumultuous history of racial discrimination and capital punishment in America. This history is necessary in understanding the context of the current social research on racial disparities in death sentencing (discussed in Part III) and South Carolina's own history with racial discrimination and the death penalty (discussed in Part IV). Part V of this report explains why South Carolina needs a Racial Justice Act and how the proposed act would work.

## **II. Racial Discrimination Casts An Ever-Present Shadow Over The Death Penalty System In America.**

### **A. *Furman v. Georgia*: The U.S. Supreme Court strikes down death.**

The history of capital punishment in America is inexorably intertwined with a history of race relations.<sup>2</sup> In 1972, the United States Supreme Court was squarely confronted with America's troubled history of race and capital punishment when it decided *Furman v. Georgia*,<sup>3</sup> which effectively invalidated all existing death penalty statutes. In *Furman*, the Court was faced

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<sup>1</sup> Proposed language for a South Carolina Racial Justice Act is attached to this report as Appendix A.

<sup>2</sup> See, e.g., Stuart Banner, "Traces of Slavery: Race and the Death Penalty in Historical Perspective," in CHARLES J. OGLETREE, JR. & AUSTIN SARAT, FROM LYNCH MOBS TO THE KILLING STATE: RACE AND THE DEATH PENALTY IN AMERICA 96 (2006); David C. Baldus et al., EQUAL JUSTICE AND THE DEATH PENALTY 370-93 (1990); Samuel R. Gross & Robert Mauro, DEATH AND DISCRIMINATION: RACIAL DISPARITIES IN CAPITAL SENTENCING 159-211 (1989); Stephen B. Bright, *Discrimination, Death and Denial: The Tolerance of Racial Discrimination in Infliction of the Death Penalty*, 35 SANTA CLARA L. REV. 433 (1995); Sheri Lynn Johnson, *Unconscious Racism and the Criminal Law*, 73 CORNELL L. REV. 1016 (1988).

<sup>3</sup> 408 U.S. 238 (1972).

with three cases involving black defendants sentenced to death. The National Association for the Advancement of Colored People (“NAACP”), the National Urban League, the Southern Christian Leadership Conference, the Mexican-American Legal Defense and Education Fund, and the National Council of Negro Women filed an amicus brief which focused on “the areas that bear with discriminatory harshness upon blacks, Mexican-Americans, the poor and other disadvantaged persons.”<sup>4</sup> The eleven-page appendix, entitled “Pre-Civil War History of Punishment for Rape in Southern States and Washington, D.C.,” listed the disparate punishment for rape in each state for white defendants and for black defendants.<sup>5</sup>

In *Furman*, the Court issued a plurality opinion supported by five separate concurring opinions. The common ground of the concurrences was the conclusion that in failing to guide judges and juries properly in their sentencing decisions, the Georgia and Texas capital punishment statutes under consideration produced death sentences that were so arbitrary and capricious as to be “cruel and unusual” under the Eighth Amendment.<sup>6</sup> Several of the justices discussed America’s history of racial discrimination – in different forms and for different reasons – both in opposition to and in support of the Court’s decision in *Furman*.<sup>7</sup>

Justice Douglas was concerned with disproportionate application of the death penalty to unpopular groups, including racial minorities. He introduced the defendants as “Jackson, a black,” “Furman, a black,” and “Branch, a black” and noted that Jackson and Branch were convicted of raping white women.<sup>8</sup> He documented the “ethnic disparities” revealed by a study of capital cases in Texas between 1924 and 1968.<sup>9</sup> And, in a footnote, Justice Douglas presented a table entitled “Race of the Offender by Final Disposition,” which separates defendants into

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<sup>4</sup> Brief of Amici Curiae of the NAACP, et al., filed August 31, 1971. See also, “NAACP Hails Ban On Death Penalty,” 79 THE CRISIS 278 (1972) (quoting statement of Nathaniel R. Jones, general counsel of the NAACP: “The History of the administration of capital punishment clearly illustrates that it was applied in a way that discriminated against black Americans”).

<sup>5</sup> *Id.* at 1a.

<sup>6</sup> *Id.* at 249-52 (Douglas, J., concurring). The Eighth Amendment provides, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII.

<sup>7</sup> For example, Justice Brennan argued that the death penalty was unconstitutional for a broad range of reasons, only one of which – arbitrary infliction of severe punishment – implicates racial discrimination. *Id.* at 294 n.48 (Brennan, J., concurring). Chief Justice Burger, in his dissenting opinion, acknowledged in a footnote claims of racial discrimination, but concluded that “it is not enough to show how [the death penalty] was applied in the distant past” because racial segregation was no longer the official policy of many states. *Id.* at 389 n.12 (Burger, C.J., dissenting). Justice Powell was also dismissive of past racial discrimination, claiming that times had changed. *Id.* at 450 (Powell, J., dissenting).

<sup>8</sup> *Furman*, 408 U.S. at 252-53 (Douglas, J., concurring).

<sup>9</sup> *Id.* at 250-51.

black and white categories and lists dispositions of “executed” and “commuted,” revealing persistent racial discrimination.<sup>10</sup>

Justice Marshall pointed to statistics of the execution of white and black individuals since 1930 and concluded that America’s history of race and capital punishment “would serve to convince even the most hesitant of citizens to condemn death as a sanction.”<sup>11</sup>

Justice Stewart was likewise convinced of the pernicious effect of race, observing that “if any basis can be discerned for the selection of these few to be sentenced to die, it is the constitutionally impermissible basis of race.”<sup>12</sup>

### **B. *Gregg v. Georgia* – death resurrected.**

Within six months of the *Furman* decision, states began enacting new death penalty statutes intended to address the deficiencies identified by *Furman*.<sup>13</sup> In 1976, the Court considered the first challenges to these statutes in *Gregg v. Georgia*,<sup>14</sup> *Proffitt v. Florida*,<sup>15</sup> and *Jurek v. Texas*,<sup>16</sup> collectively known as *Gregg*, and upheld death penalty statutes that provided judges and juries with sentencing guidelines by which to make the life-or-death decision.<sup>17</sup>

In *Gregg*, even as the Court reinstated capital punishment, the Court’s awareness of a race-conscious history was not wholly absent. First, the Court highlighted the importance of the statutory schemes’ automatic appellate review to ferret out improper “passion” and “prejudice.”<sup>18</sup> Justice White noted that Georgia’s scheme required the trial judge in every death penalty case to complete a questionnaire and submit it to the Georgia Supreme Court as part of the appellate review process. The questionnaire contained “six questions designed to disclose whether race played a role in the case.”<sup>19</sup> Second, the Court reasoned that retribution may be a valid element of punishment which, if not channeled through the criminal justice system, might result in “self-

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<sup>10</sup> *Id.* at 250 n.15.

<sup>11</sup> *Id.* at 363-64 (Marshall, J., concurring).

<sup>12</sup> *Id.* at 310 (Stewart, J., concurring).

<sup>13</sup> Death Penalty Information Center, History of the Death Penalty, Part I, at <http://www.deathpenaltyinfo.org> (last viewed August 20, 2008).

<sup>14</sup> 428 U.S. 153 (1976).

<sup>15</sup> 428 U.S. 242 (1976).

<sup>16</sup> 428 U.S. 262 (1976).

<sup>17</sup> In deciding on the sentence, the judge or jury was to consider any of ten statutory aggravating circumstances supported by the evidence, as well as “any mitigating or aggravating circumstances otherwise authorized by law.” *Gregg*, 428 U.S. at 164.

<sup>18</sup> *Gregg*, 428 U.S. at 204; *see also*, *Proffitt*, 428 U.S. at 250-51.

<sup>19</sup> *Id.* at 211 (White, J., concurring).

help, vigilante justice, and lynch law.”<sup>20</sup> Third, the Court considered the petitioner’s argument that impermissible discretionary opportunities remained in the hands of the state prosecutor, jury, and governor, but because the Court found no evidence of discrimination in the petitioner’s particular case, the Court rejected this argument.<sup>21</sup>

**C. *McCleskey v. Kemp* – a challenge squarely about race.**

*Furman* and *Gregg* both involved broad challenges to America’s capital punishment system in which racial discrimination was only one of several inequities. Many litigators and academics believed that the door remained open to a singular challenge showing that race remained an important and impermissible factor in the administration of capital punishment.<sup>22</sup> Thus, in 1986, the Supreme Court was again confronted with evidence of racial discrimination in *McCleskey v. Kemp*.<sup>23</sup> Warren McCleskey, a black man, was convicted and sentenced to death in a Georgia state court for the murder of a white police officer during an armed robbery.<sup>24</sup> McCleskey challenged his sentence, asserting that race affected the application of the Georgia death penalty statute in two ways. First, defendants convicted of murdering whites were more likely to be sentenced to death than defendants convicted of murdering blacks.<sup>25</sup> Second, black defendants were more likely to be sentenced to death than white defendants.<sup>26</sup>

McCleskey presented a wealth of statistical evidence from a study of more than 2,000 Georgia capital cases.<sup>27</sup> The study, conducted by a team of researchers lead by Professor David Baldus of the University of Iowa College of Law, produced some remarkable findings.<sup>28</sup> It revealed that prosecutors sought the death penalty in 70 percent of cases involving black defendants and white victims, but just 19 percent of cases involving white defendants and black victims.<sup>29</sup> Judges and juries imposed death sentences in 22 percent of cases involving black defendants and white victims, but in just 3 percent of cases involving white defendants and black

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<sup>20</sup> *Id.* at 183 (quoting *Furman*, 408 U.S. at 308 (Stewart, J., concurring)).

<sup>21</sup> *Id.* at 198-204.

<sup>22</sup> John H. Blume, et. al., *Post-McCleskey Racial Discrimination Claims in Capital Cases*, 83 CORNELL L. REV. 1771, 1776 (1998).

<sup>23</sup> 481 U.S. 279 (1987).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 291.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 286-87.

<sup>28</sup> *Id.* at 287.

<sup>29</sup> *Id.*

victims.<sup>30</sup> After subjecting the data to an extensive analysis that accounted for 230 variables that could have provided non-racial explanations for these disparities, Baldus concluded that Georgia defendants who killed whites were 4.3 times more likely to receive a death sentence than defendants who killed blacks.<sup>31</sup> This was the most sophisticated and powerful evidentiary showing a capital defendant had ever made.

By a one-vote margin, the Supreme Court rejected McCleskey's claims.<sup>32</sup> The Court admitted the existence of racial disparity in capital sentencing, but declined to recognize it as a constitutional violation for two stated policy concerns. First, in what many critics have labeled "a fear of too much justice,"<sup>33</sup> the Court claimed that there was "no limiting principle to the type of challenge brought by McCleskey."<sup>34</sup> Second, the Court asserted that legislatures are better equipped than courts to interpret and respond to large-scale studies such as the one McCleskey presented.<sup>35</sup> The Court stated that "McCleskey's arguments are best presented to the legislative bodies. It is not the responsibility – or indeed even the right – of this Court to determine the appropriate punishment for particular crimes."<sup>36</sup> In short, the Court concluded that McCleskey's claim called for a response beyond the Court's institutional competence.<sup>37</sup>

#### **D. The legislative response to *McCleskey*.**

The first attempt to respond to *McCleskey* came from Congress in the spring of 1988 when several members proposed a Racial Justice Act that would allow defendants to seek a court's review of whether race played a part in a sentence of death.<sup>38</sup> Although the U.S. House of Representatives passed versions of a Racial Justice Act in 1990 and 1994, the legislation never passed the House-Senate conference process and never became a federal law.<sup>39</sup> In 1998, Kentucky became the first jurisdiction to enact a state Racial Justice Act.<sup>40</sup> In April 2007, North Carolina's House of Representatives passed a bill proposing a Racial Justice Act, and the bill is

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<sup>30</sup> *Id.* at 286.

<sup>31</sup> *Id.* at 287.

<sup>32</sup> *Id.* at 291-92, 308.

<sup>33</sup> See e.g., Paul Schoeman, Note, *Easing the Fear of Too Much Justice: A Compromise Proposal to Revise the Racial Justice Act*, 30 HARV. C.R.-C.L. L. REV. 543 (1995).

<sup>34</sup> *Id.* at 318. The Court noted that America's multi-racial society consisted of many racial and ethnic minorities, all of whom could claim some form of past racial discrimination.

<sup>35</sup> *Id.* at 314-19.

<sup>36</sup> *Id.* at 319.

<sup>37</sup> *Id.*

<sup>38</sup> Schoeman at 551, *supra*, note 33.

<sup>39</sup> *Id.*

<sup>40</sup> Ky. Rev. Stat. Ann. § 532.300(1) (Michie 2004).

pending in the state Senate.<sup>41</sup> A handful of other states also made efforts to respond to racial disparity in capital proceedings.<sup>42</sup>

### III. Evidence of The Correlation Between Race And Death.

In the years since the Supreme Court's decision in *McCleskey*, and even before, social scientists and legal researchers have produced a significant body of research showing death sentences to be correlated with race of both murder victims (the highest rates being found in white-victim cases) and murder defendants (the highest rates being found in black-defendant cases).<sup>43</sup> There are far too many studies to highlight in this report. A few examples demonstrate the breadth of this research.

#### A. The GAO Report finds racial disparity is pervasive.

In 1990, Congress asked the United States General Accounting Office ("GAO") to review race data collected across the country from 1972 to 1990. The GAO reviewed 28 studies from a variety of jurisdictions and concluded:

Our synthesis of the 28 studies shows a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty after the *Furman* decision. In 82 percent of the studies, race of the victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks. This finding was remarkably consistent across data sets, states, data collection methods, and analytic techniques.<sup>44</sup>

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<sup>41</sup> See WRAL-TV, NAACP put NC Racial Justice Act at top of agenda, August 8, 2008, available at <http://www.wral.com/news/state/story/3337589> (last viewed August 20, 2008).

<sup>42</sup> See N.Y. Crim. Proc. § 470.30(3)(a) (McKinney 1995) (requiring the Court of Appeals to consider "whether the imposition of the verdict or sentence [of death] was based upon the race of the defendant or a victim of the crime for which defendant was convicted"); *Foster v. State*, 614 So.2d 455 (Fla. 1992) (4-3 decision) (dissenting opinion of Barkett, C.J., rejecting the majority opinion in *McCleskey* as inconsistent with the Florida constitution). Legislatures in Georgia and Illinois also considered forms of a Racial Justice Act.

<sup>43</sup> See, e.g., U.S. General Accounting Office, *Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities* (1990), reprinted in 136 Cong. Rec. S6873, 6889 (1990) [hereafter, GAO Report]; David C. Baldus, et al., *Racial Discrimination and the Death Penalty in the Post-Furman Era: An Empirical and Legal Overview, with Recent Findings from Philadelphia*, 83 Cornell L. Rev. 1638, 1738 (1998) [hereafter, Overview].

<sup>44</sup> GAO Report at 5(emphasis added).

**B. Baldus finds being black increases a defendant's chance of receiving a death sentence to the same degree as the aggravating factor of "Torture" in that particular defendant's case.**

In 1998, David Baldus conducted a similar review of race data from 29 death penalty states for the American Bar Association.<sup>45</sup> Baldus found that in 90% (26/29) of these states, there was evidence of race-of-victim disparities, i.e., under otherwise similar circumstances, a defendant was more likely to receive a death sentence if the victim was white than if the victim was black.<sup>46</sup> Based on research conducted in Philadelphia, Baldus likened the impact of being black to being saddled with an extra aggravating factor, that is, on average, being African American increased the chance of a defendant receiving a death sentence to the same degree that the presence of the aggravating circumstance of "torture" or "grave risk of death" increased the chance of a non-African American getting a death sentence.<sup>47</sup>

**C. The ACLU reports racial bias affects the federal death penalty.**

In June 2007, the American Civil Liberties Union ("ACLU") released a report detailing evidence that racial disparities continue to plague the federal death penalty.<sup>48</sup> The report revealed that former U.S. Attorney Generals were more likely to seek the death penalty in white victim cases than in cases involving victims of color.<sup>49</sup> From his appointment in 2005 to May 10, 2007, former U.S. Attorney General Alberto Gonzales considered 67 cases for the death penalty that involved one or more white victims.<sup>50</sup> Of those 67 cases, Gonzales authorized prosecutors to seek the death penalty in 28 (41.79%) of those cases.<sup>51</sup> By contrast, during the same time period, Gonzales considered 261 cases involving non-white victims and authorized prosecutors to seek death in only 43 (16.48%) of those cases – 25.31% more often in cases involving white victims than in cases involving non-white victims.<sup>52</sup> Similar statistics told a parallel story about previous U.S. Attorney Generals Janet Reno (authorized death 15.68% more often in white victim cases

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<sup>45</sup> See David Baldus Report to the ABA, 1998.

<sup>46</sup> *Id.*

<sup>47</sup> See Overview at 1699-1701.

<sup>48</sup> *The Persistent Problem of Racial Disparities in the Federal Death Penalty*, (ACLU, New York, N.Y.), June 25, 2007.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*



than in non-white counterparts) and John Ashcroft (approved death 12.97% more often for white victim cases).<sup>53</sup>

The ACLU Report also detailed information from a 2000 U.S. Department of Justice study showing that 48% of white defendants were able to avoid the death penalty through plea bargains, while only 25% of black defendants and 28% of Hispanic defendants were able to do the same.<sup>54</sup>

#### **IV. Race And The Death Penalty In South Carolina.**

##### **A. South Carolina's history: From *Furman* to present day.**

In the wake of *Furman*, South Carolina enacted a mandatory capital punishment system requiring the courts to automatically impose death on anyone found guilty of murder. The idea was to eliminate discretion altogether, since *Furman* held that too much discretion resulted in unconstitutionally arbitrary infliction of the death penalty. In 1976, however, the United States Supreme Court held that mandatory capital punishment schemes were unconstitutional because, among other shortcomings, they failed “to allow the particularized consideration of relevant aspects of the character and record of each convicted defendant.”<sup>55</sup>

In 1977, the South Carolina General Assembly enacted South Carolina's current death penalty statute, which was modeled after the Georgia system approved in *Gregg* the year before.<sup>56</sup> Since 1977, 173 individuals (172 men and 1 woman) have been sentenced to death in South Carolina.<sup>57</sup> As shown on the charts below, 91 (or 52.6%) of the 173 individuals to receive a death sentence were white; 82 (or 47.4%) were African-American.<sup>58</sup> Of the 173 individuals, 141 (or 82%) were sentenced to death for killing at least one white victim; 27 (or 16%) for killing a non-white.<sup>59</sup>

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<sup>53</sup> *Id.* No data have yet been collected concerning current Attorney General Michael Mukasey's rate of death penalty authorization in white and non-white victim cases.

<sup>54</sup> *Id.*

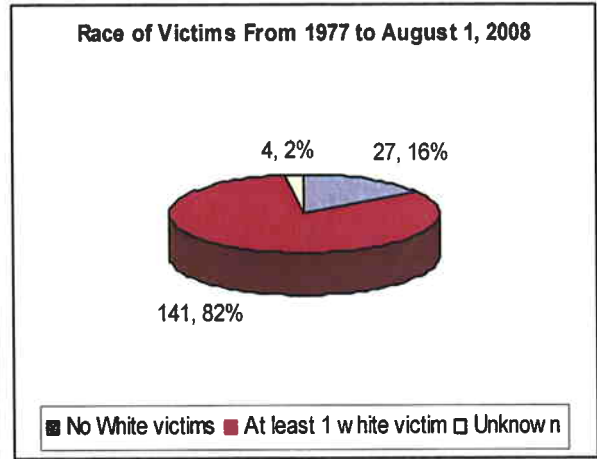
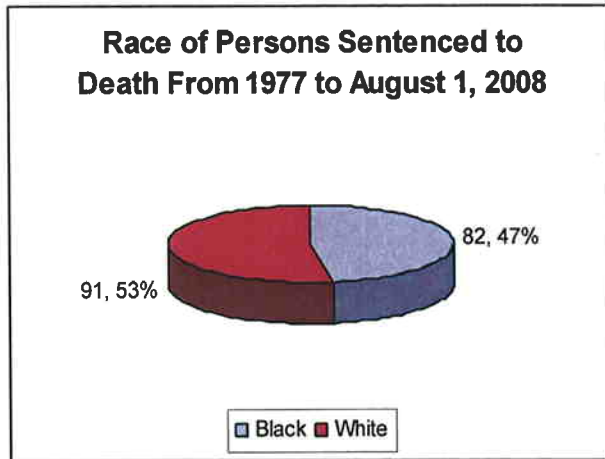
<sup>55</sup> *Woodson v. North Carolina*, 428 U.S. 280, 303 (1976). After *Woodson*, the South Carolina Supreme Court declared the mandatory statute invalid in *State v. Rumsey*, 226 S.E.2d 894 (S.C. 1976).

<sup>56</sup> See S.C. Code § 16-3-20. South Carolina has amended the statute slightly over the years, primarily to include new aggravating and mitigating circumstances and to eliminate a capital defendant's parole eligibility.

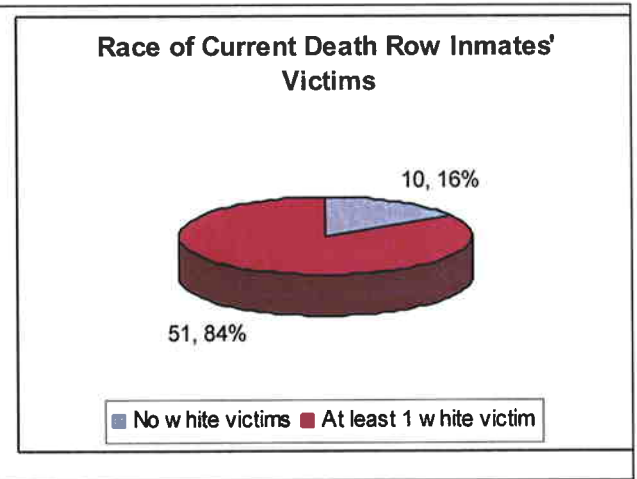
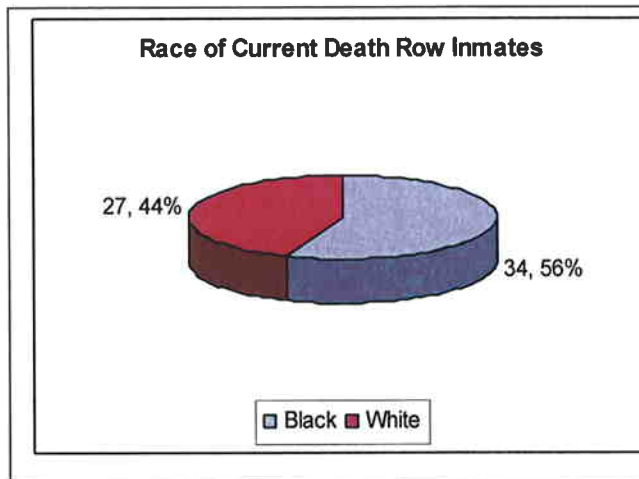
<sup>57</sup> See Appendix B.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*



South Carolina’s current death row population parallels the historic trend. As of August 1, 2008, sixty-one men, and no women, wait to die on South Carolina’s death row.<sup>60</sup> Thirty-four of those inmates – or 55.7% – are African-American.<sup>61</sup> Blacks comprise only 29% of the state’s population.<sup>62</sup> Of the 61 total inmates currently on death row, 83.6% are there for killing a white victim.<sup>63</sup> Nearly all (24 out of 27) of the white defendants were sentenced to death for killing another white.<sup>64</sup>



Presently, there is no data available in South Carolina about the total, statewide number of death-eligible crimes committed (historically or currently) and the corresponding race statistics. The solicitors’ offices do not keep or report such information. Such data would no

<sup>60</sup> See Appendix C.

<sup>61</sup> *Id.*

<sup>62</sup> See U.S. Census Bureau, State and County Quickfacts, at <http://quickfacts.census.gov> (based on 2006 census data) (last viewed August 1, 2008).

<sup>63</sup> See Appendix C.

<sup>64</sup> *Id.*

doubt be useful in either confirming or dispelling the discrimination suggested by the sentencing disparities shown in the charts above. The adoption of a Racial Justice Act in South Carolina would provide an incentive for state officials to maintain and report information on all death-eligible crimes. This incentive is discussed further in Section V.B.

**B. Several recent studies show that South Carolina is no exception to “the distorting effects of racial discrimination.”<sup>65</sup>**

In a report released in 2004, Professors John Blume and Ted Eisenberg of Cornell Law School examined homicide cases in several states, including South Carolina, from 1977 to 1998 using the FBI’s data.<sup>66</sup> The study revealed that African-Americans who kill whites in South Carolina are sentenced to death at approximately 3 times the rate of whites who kill whites.<sup>67</sup> In fact, Blume and Eisenberg found that two powerful forms of discrimination are at work in South Carolina’s capital punishment system. First, the death penalty is rarely sought or obtained when the murder victim is African-American.<sup>68</sup> Even though most murder victims are African-American, only 0.46% of black victim cases result in a death sentence.<sup>69</sup> On the other hand, white victim cases, which resulted in a sentence of death in 3.4% of the cases studied, were quite a different matter.<sup>70</sup> Thus, a person charged with killing a white victim is 8 times more likely to be sentenced to death than a person charged with killing an African-American.<sup>71</sup> Second, African-American’s are generally more likely to be sentenced to death regardless of the race of their victims.<sup>72</sup> Thus, when these two forms of discrimination are viewed together, an African-American charged with killing a white person is approximately 6 times more likely to be sentenced to death than cases involving any other race of victim/defendant combination.<sup>73</sup>

Sophisticated statistical analyses have also been conducted in selected South Carolina counties. For example, Blume and Eisenberg examined all homicide cases in Charleston County

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<sup>65</sup> *Godfrey v. Georgia*, 446 U.S. 420, 439 (Marshall, J., concurring).

<sup>66</sup> Blume & Eisenberg, *Explaining Death Row’s Population and Racial Composition*, 1 *Journal of Empirical Legal Studies* 165 (2004).

<sup>67</sup> *Id.* at 196-99. In black defendant/white victim cases, the death sentencing rate is 67.8 death sentences per 1000 homicides (50 death sentences for 738 murders). In white defendant/white victim cases, the death sentencing rate is 27.1 death sentences per 1000 homicides (72 death sentences for 2,654 murders). An earlier study by Professor Raymond Paternoster made similar findings specific to South Carolina. See Paternoster and Kazyaka, *The Administration of the Death Penalty in South Carolina over the First Few Years*, 39 *S.C. L. Rev.* 245, 324 (1988).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

from 1981-1990 during the time period that Charlie Condon – former Attorney General and former Gubernatorial candidate – was Solicitor.<sup>74</sup> During the Condon era, the prosecution sought the death penalty in 10 of 25 (40%) cases where the defendant was African-American and the victim was white, but in only 2 of 70 (2.9%) cases where the defendant and the victim were both black.<sup>75</sup> This pattern could occur by chance less than one time in a thousand.<sup>76</sup> Similarly, the prosecution sought the death penalty in 32.3% of all white victim cases and 5.2% in all black victim cases, another statistical discrepancy which could occur by chance less than one time in one thousand.<sup>77</sup>

In an in-depth study on racially discriminatory practices in Spartanburg County covering years 1977 to 1993, Eisenberg gathered data from court files on all the homicide cases in the Seventh Judicial Circuit.<sup>78</sup> The study revealed that between 1977 and 1993, the Solicitor sought the death penalty in half of the 52 death eligible cases that involved a white victim and in none of the 19 death-eligible cases where the victim was black.<sup>79</sup> Such a result could occur by chance about four times in one hundred thousand. Eisenberg’s study made clear that, in Spartanburg County, the defendant-victim combination most likely to result in the decision to seek the death penalty was a black-defendant/white-victim pairing.<sup>80</sup>

### **C. Broad prosecutorial discretion opens the door to discrimination.**

#### **i. Recent examples show abuse of prosecutorial discretion by some South Carolina solicitors.**

Because the power of discretion is just that – discretionary – its abuse can be difficult to measure and observe. On at least one known occasion, however, a South Carolina solicitor admitted that he sought death in a black-victim case solely to placate the black community, rather than in the interest of pursuing justice.<sup>81</sup> In 2003, the court vacated Theodore Kelly’s death sentence because, among other reasons, the deputy Solicitor testified at the post-conviction relief hearing: “[I] felt like the black community would be upset if we did not seek the death

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<sup>74</sup> Blume, et al., *Post-McCleskey Racial Discrimination Claims in Capital Cases*, 83 Cornell L. Rev. 1771, 1782 (1998).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> Petition for Writ of Certiorari at 35, *Simpson v. Moore*, 627 S.E.2d 701, (S.C. 2006) No. 97-CP-42-1911 (Aug. 9, 2002).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Kelly v. State*, Case No. 99-CP-42-1174, Oct. 6, 2003 (Trial Court Order Granting Relief), on file with the author.

penalty because there were two black victims in this case.”<sup>82</sup> The court found that this overt use of race as a consideration on whether or not to seek the death penalty violated due process.<sup>83</sup>

In Richland County, Barney Giese, the elected Solicitor since 1994, has never sought the death penalty against a white defendant. But, in contrast, Giese has sought the death penalty against nine African Americans and one Hispanic, despite the fact that there are at least six white defendants that have committed death-eligible crimes in Richland County during Giese’s tenure. This is a strong indication that white and minority defendants who committed death eligible offenses were treated differently by Giese’s office.

In a death-penalty case in Lexington County in 2000, solicitor Donnie Myers secured a death sentence against a large, African-American defendant to whom Myers referred to in court as “King-Kong.”<sup>84</sup>

In 1998, Louis Truesdale was executed despite un-contradicted evidence that jurors in his case openly used racial slurs during their deliberations at the sentencing phase of his trial.<sup>85</sup> Truesdale, an African-American, was accused of raping and murdering a young, white female in Lancaster County. One of the jurors provided an affidavit to Truesdale’s counsel stating that two white male jurors said that “the nigger has to fry” during the course of their deliberations.<sup>86</sup>

**ii. More often, decision-makers may not even be aware of their own racial biases.**

Modern scholars have long agreed that overt racism is much less prevalent than “unconscious racism,” which is no less damaging.<sup>87</sup> In a 2006 study entitled, “Looking Deathworthy,” Professor Eberhart of Stanford University examined over 600 death eligible cases from Philadelphia, Pennsylvania and found that defendants who are perceived to look more stereotypically black – for example, defendants who have a broad nose, thick lips, or darker skin – have a higher probability of being sentenced to death.<sup>88</sup> The study found that the effects of unconscious racism were a predicable factor in sentencing outcomes: 58% of defendants seen as

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *The State*, “Myers an unrepentant death-penalty prosecutor,” September 17, 2000.

<sup>85</sup> *The State*, “Truesdale executed for murder,” December 12, 1998, B-1.

<sup>86</sup> *Id.*

<sup>87</sup> See, e.g., Sheri Lynn Johnson, *Unconscious Racism and the Criminal Law*, 73 CORNELL L. REV. 1016 (1988); Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

<sup>88</sup> Jennifer L. Eberhardt, et al., “*Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes*,” 17 *Psychol. Sci.* 383 (2006).

more stereotypically black were sentenced to death, compared to 24% of those perceived as less stereotypically black.<sup>89</sup> The study confirms what we already know – that race matters when it comes to capital punishment, and – alarmingly – we may not always be able to identify racial bias, and readily address it, because it is denied, hidden, or even unconscious.

South Carolina’s complete lack of diversity among solicitors offers little comfort for this concern. A study by Professor Jeffrey Pokorak, from the St. Mary’s School of Law in San Antonio, Texas, found that, in 1998, 98% of the country’s district attorneys responsible for the decision to seek the death penalty were white.<sup>90</sup> Only 1% were black. In South Carolina, 100% of chief solicitors were white – there was not a single black or Hispanic among people who decide who is to face the death penalty in this state.<sup>91</sup>

**D. Racial discrimination has also been detected in the prosecution’s use of its peremptory challenges.**

It is generally understood that the “death qualification” process dilutes the number of African-Americans who serve on capital juries.<sup>92</sup> Beyond that, however, many prosecutors use their peremptory challenges to remove all or most African-Americans from the jury. For example, a study of the use of peremptory challenges in Lexington County capital cases, conducted by Professor William Jacoby of the University of South Carolina, found systematic elimination of potential black jurors.<sup>93</sup> In fact, the study concluded that the statistical likelihood that racial discrimination was not the cause was of the stark racial disparity in death sentencing in Lexington County was less than one in a billion.<sup>94</sup> The statistical evidence was supported by the testimony of lawyers and even a judge.<sup>95</sup>

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<sup>89</sup> *Id.*

<sup>90</sup> See Jeffrey Pokorak, *Probing the Capital Prosecutor’s Perspective: Race of the Discretionary Actors*, 83 CORNELL L. REV. 1811 (1998).

<sup>91</sup> *Id.*

<sup>92</sup> As a general matter, individuals who are opposed to capital punishment are not eligible to serve on a jury where the death penalty is a possible punishment. See *Witherspoon v. Illinois*, 391 U.S. 510 (1968); *Wainwright v. Witt*, 469 U.S. 412 (1985). During *voir dire*, potential juror’s views on the death penalty are explored in order to “death qualify” the jury. This process leads to juries more likely to convict the defendant. Also, because more African-Americans than whites are opposed to the death penalty, the qualification process dilutes minority participation in capital cases.

<sup>93</sup> See John H. Blume et al., *Post McCleskey Racial Discrimination Claim in Capital Cases*, 83 Cornell L. Rev. 1771, 1792 (1998).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* H. Patterson McWhirter, the former Public Defender for Lexington County, testified that in the fourteen years he was public defender “I never had a black on a jury. I mean I’m not talking about a death penalty trial, but I’m talkin’ about [any] trial. I never had a black on a jury when I had a black defendant.”

In Richland County, the Solicitor's Office under Giese exercised 84% of its peremptory strikes against African-American jurors in four capital cases.<sup>96</sup> Out of a total of nineteen (19) strikes during the trial of these four cases, the solicitor exercised sixteen (16) strikes against African-American jurors and only three (3) against white jurors.<sup>97</sup> Thus, Giese not only exclusively sought the death penalty against African Americans as shown above, but routinely excluded African-American jurors from juries in capital cases.

South Carolina is not unique in its use of peremptory challenges to exclude black jurors, but is instead a microcosm of what is happening in other death penalty states throughout the country. In what is now infamously known as the "McMahon Tapes," Jack McMahon, then a Philadelphia prosecutor, was captured on a training tape advising young prosecutors on how to keep African Americans off juries, telling them: "The blacks from the low-income areas are less likely to convict."<sup>98</sup> McMahon also targeted black women: "My experience, young black women are very bad. There's an antagonism. I guess because they're downtrodden...so they want to take it out on somebody."<sup>99</sup> McMahon advised on how to create a pre-textual race-neutral explanation for striking blacks from the jury: "In the future, we're going to have to be aware of *Batson*,<sup>100</sup> and the best way to avoid any problems with it is to protect yourself. . . mark something down so you can protect yourself later. . . the defense attorney makes an objection saying you're striking blacks, you're not going to be able to go back and make up something about why you did it."<sup>101</sup> In defending his actions after the tape was released, McMahon said he was told to instruct new prosecutors on how "it's really done," and that is what he did.<sup>102</sup>

**E. South Carolinians facing the death penalty are subject to discrimination from their own advocates.**

Discrimination is not limited to jurors, solicitors, or judges; even those tasked with protecting a defendant's rights have evidenced racial discrimination. There have been shocking examples of discrimination by defense lawyers. In a recent case, appointed defense counsel

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<sup>96</sup> Def.'s Mot. to Quash State's Notice of Intent to Seek the Death Penalty for Failure to Pursue the Death Penalty in a Race-Neutral Manner at 4, on file with the author.

<sup>97</sup> *Id.*

<sup>98</sup> *The Philadelphia Inquirer*, "Philadelphia DA Candidate's Tips on Jury Selection: To Win, Limit Black Jurors, McMahon Said," April 1, 1997, available at <http://levellers.org/jrp/orig/jrp.philinfo.htm> (last visited August 20, 2008).

<sup>99</sup> *Id.*

<sup>100</sup> *Batson v. Kentucky*, 476 U.S. 79 (1986), prohibits the use of peremptory strikes on the basis of race.

<sup>101</sup> *The Philadelphia Inquirer*, *supra*, note 97.

<sup>102</sup> *Id.*

referred to his client, who was charged with raping and killing a young white female, as a “big black . . . buck” in front of the jury.<sup>103</sup> Counsel’s point was that his client could not have committed the rape – and thus the murder – because the victim had no vaginal tearing. The same attorney also remarked about African Americans: “I know them. I grew up with them. I played with them. I understand them as much as most people can.”<sup>104</sup>

In another case, when defense counsel heard that a hair resembling his client’s – an African-American man with auburn hair – had been found at the crime scene, counsel remarked: “of all the luck, a red headed nigger.”<sup>105</sup>

## **V. The Need For A Racial Justice Act In South Carolina.**

Despite a growing body of evidence revealing systemic discrimination at the state and national levels, little has been done to address this problem in the criminal justice system. In *McCleskey*, the Supreme Court suggested that this was a task for the legislature; South Carolina’s legislature should accept that task. In order to effectively identify and eliminate racial discrimination in capital charging and sentencing, South Carolina should enact a Racial Justice Act that would allow litigants to prove their claims by showing a pattern and practice of discrimination. Proposed language for a South Carolina Racial Justice Act is attached to this report in Appendix A.

### **A. How a South Carolina Racial Justice Act would work.**

Unlike the failed proposed federal act, which focused exclusively on challenges to tainted sentences after their imposition, the proposed South Carolina Racial Justice Act (“SCRJA”) also focuses on the period before trial, during which a solicitor decides whether or not to seek the death penalty in a given murder case.<sup>106</sup> A South Carolina capital defendant who suspects that his race or the race of the victim formed the basis for the prosecution’s decision to seek death may allege a violation of the SCRJA at a pretrial hearing.<sup>107</sup> If the defendant proves his claim by clear and convincing evidence, the court must order that a death sentence cannot be sought in that case.

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<sup>103</sup> *State v. Horace Butler*, Trial Transcript at 68, on file with the author.

<sup>104</sup> *Id.* at 116.

<sup>105</sup> Interview with attorney in *State v. Elmore*, on file with the author.

<sup>106</sup> See South Carolina Bill Text, Pretrial Procedures, Appendix A. The proposed text includes post-trial procedures as well.

<sup>107</sup> See *id.* The defendant may also assert a claim, based on jury discrimination, post-trial.



The SCRJA provides that a defendant may establish that race was the basis of a decision to seek death “if the court finds that race was a significant factor in decisions to seek the sentence of death in the county, the prosecutorial district, or the State at large, at the time the death sentence was sought.”<sup>108</sup> A defendant may rely on “statistical evidence or other evidence, or both” to show that race played a part in his or her sentencing outcome.<sup>109</sup> Thus, the statute expressly recognizes that statistical evidence is relevant to the “significant factor” determination. Following the proposed federal act’s lead, the SCRJA accounts for both race-of-defendant discrimination and race-of-victim discrimination. A defendant may show that death was sought “significantly more frequently” for persons of one race than persons of another race (race-of-defendant discrimination) or that death was sought “significantly more frequently” as punishment for capital offenses against persons of one race as compared to another race (race-of-victim discrimination).<sup>110</sup>

The SCRJA erects a high evidentiary wall for the defendant to surmount. The defendant must “state with particularity how the evidence supports a claim that racial considerations played a significant part in the decision either to seek a death sentence or to impose a death sentence in his or her case.”<sup>111</sup> In addition, the defendant has the burden of proving by clear and convincing evidence that race was the basis of the decision to seek death in his case, and the State may offer evidence in rebuttal.<sup>112</sup>

### **B. Policy reasons in support of the SCRJA.**

There are several policy reasons supporting adoption of the SCRJA. First, it is evident from the vast body of research that *McCleskey* fails to protect capital defendants from racial discrimination; sound policy should not ignore our present realities.

Second, allowing defendants to make a rebuttable showing of racial discrimination by statistical evidence would simply bring the criminal law in line with racial discrimination claims in every other context. For example, courts have long permitted statistical and anecdotal

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<sup>108</sup> South Carolina Bill Test, Pretrial Procedures, Appendix A.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

evidence in employment and fair-housing discrimination cases.<sup>113</sup> The SCRJA is a modest but important step toward remedying the issues revealed by the empirical data.

Third, adoption of the SCRJA would further the important goal of transparency, which is a critical step towards ensuring that the death penalty is not administered in an arbitrary or discriminatory manner in South Carolina. Currently, South Carolina's solicitors decide whether or not to seek the death penalty under a shroud of secrecy. No solicitor's office in South Carolina employs public guidelines defining standards and procedures for seeking the death penalty. Solicitors are not required to collect or report information on their decisions whether to seek the death penalty. And yet, we know that administration of the death penalty is highly selective. Only a small portion of death-eligible murders are prosecuted as death penalty cases. Statistical disparities, coupled with a lack of transparency in the exercise of prosecutorial discretion, suggests racial bias. Allowing a defendant to discover and raise claims of racial discrimination in prosecutorial decision-making would certainly – or, dispel any unwarranted suspicion of – racial discrimination in capital sentencing in South Carolina.

Finally, passage of the SCRJA would foster public confidence in the fairness of the judicial system in general. Public opinion polls demonstrate that a considerable portion of the public believes race-of-defendant disparities occur in capital proceedings. In a March 2001 Gallup poll, 50 percent of respondents agreed that a black person is more likely than a white person to receive the death penalty for the same crime.<sup>114</sup> In 2002, 40% of Americans responded that the death penalty is applied unfairly.<sup>115</sup> During floor debate over the Kentucky RJA, Representative Jesse Crenshaw introduced a letter from a retired African-American state judge and former prosecutor, who described the Racial Justice Act as “the least we can do to help erase the perception of minorities that they do not get a fair deal before the courts.”<sup>116</sup>

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<sup>113</sup> See e.g., *Hazelwood School District v. United States*, 433 U.S. 299, 303 (1977) (accepting statistical disparities in hiring practices as evidence of racial discrimination); *Betsey v. Turtle Creek Associates*, 736 F.2d 983, 988 (4th Cir. 1984) (citing statistical studies as evidence in a housing discrimination case).

<sup>114</sup> Gallup Poll Release 3/2/01, available at <http://deathpenaltyinfo.org>. A 1991 Gallup Poll found that 73 percent of black and 41 percent of whites agreed that blacks are more likely to receive the death penalty than whites in similar cases. See Wendy Kaminer, *IT'S ALL THE RAGE* 103 (1995).

<sup>115</sup> *Gallup News Service*, “Slim Majority of Americans Say Death Penalty Applied Fairly,” May 20, 2002, available at <http://www.gallup.com/poll/6031> (last visited on August 20, 2008).

<sup>116</sup> *The Advocate*, “Racial Justice Act Becomes Law: Not Soft on Crime, But Strong on Justice,” July 1998.

## APPENDIX A

### SOUTH CAROLINA BILL TEXT

**SECTION 1:** A BILL TO AMEND TITLE 17, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CRIMINAL PROCEDURE, BY ADDING CHAPTER \_\_\_ TO PROVIDE FOR THE FAIR AND RELIABLE IMPOSITION OF CAPITAL SENTENCES.

Be it enacted by the General Assembly of South Carolina,

CHAPTER \_\_\_\_. RACIAL JUSTICE ACT

SEC. \_\_\_\_\_ **South Carolina Racial Justice Act.**

No person shall be subject to or given a sentence of death, or shall be executed pursuant to any judgment that was sought or obtained on the basis of race.

SEC. \_\_\_\_\_ **Pretrial procedures**

- (a) A finding that race was the basis of the decision to seek a death sentence may be established if the court finds that race was a significant factor in decisions to seek the sentence of death in the county, the prosecutorial district, or the State at large, at the time the death sentence was sought.
- (b) Evidence relevant to establish a finding that race was the basis of the decision to seek a death sentence may include statistical evidence or other evidence, or both, that irrespective of statutory factors death sentences were sought significantly more frequently:
  - 1. Upon persons of one race than upon persons of another race, or as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race; and
  - 2. That the State is unable to justify the racial disparities demonstrated by the defendant by identifying other, legitimate sentencing considerations that when tested statistically, adequately explain the apparent racial disparities.
- (c) The defendant shall state with particularity how the evidence supports a claim that racial considerations played a significant part in the decision either to seek a death sentence or to impose a death sentence in his or her case. The claim shall be raised by the defendant at the pretrial conference or in postconviction proceedings. The court shall schedule a hearing on the claim and shall prescribe a time for the submission of evidence by both parties. If the court finds that race was the basis of the decision to seek the death sentence, the court shall order that a death sentence shall not be sought, or that the death sentence imposed by the judgment not be carried out.
- (d) The defendant has the burden of proving by clear and convincing evidence that race was the basis of the decision to seek the death penalty. The State may offer evidence in rebuttal of the claims or evidence of the defendant.

SEC. \_\_\_\_\_ **Posttrial procedure.**

- (a) A finding that race was an improper basis upon which a death sentence was obtained may be established if the court finds that race was a significant factor in decisions to exercise preemptory challenges during jury selection.
- (b) Evidence relevant to establish a finding that race was a significant factor in decisions to exercise preemptory challenges during jury selection may include statistical evidence, or other evidence, or both. Evidence may include sworn testimony of attorneys, prosecutors, law enforcement officers, or other members of the criminal justice system.

**SECTION 2.** This act is effective when it becomes law and applies retroactively.

APPENDIX B

South Carolina Death Sentences  
1977 – 2008

	<b>Name</b>	<b>Defendant's Race</b>	<b>Victim's Race</b>
1	Adams, Sylvester	Black	Black
2	Aleksey, Bayan	Black	Black
3	Allen, Quincy	Black	White & Black
4	Ard, Joseph	White	White
5	Arnold, John	White	Black
6	Arthur, Limmie	Black	Black
7	Atkins, Joseph	White	White & Black
8	Bell, Larry Gene	White	White
9	Bell, William Henry, Jr.	Black	White
10	Bellamy, Lee Grant	Black	Black
11	Bennett, Johnny	Black	Black
12	Binney, Jonathan Kyle	White	White
13	Bixby, Steven Vernon	White	White & Black
14	Bowman, Marion	Black	White
15	Brown, Jessie Keith	White	White
16	Bryant, James Nathaniel	Black	White
17	Burkhart, Troy Alan	White	White
18	Butler, Horace	Black	White
19	Butler, James Anthony	White	Asian
20	Byram, Jason	White	White
21	Cain, James Russell	White	White
22	Caldwell, Rickie Tim	White	White
23	Chaffee, Jonathan	White	White
24	Charping, Michael	White	White
25	Cockerham, Harold	White	White
26	Conyers, Robert	Black	White
27	Cooper, Gene Tony	White	White
28	Cooper, Kamathene	Black	White
29	Copeland, Henry Wesley	White	White & Black
30	Cottrell, Luzenski Allen	Black	White
31	Council, Donney	Black	White
32	Crisp, Denisona	White	Black
33	Damon, Shellie	Black	Black
34	Davis, Tommy Lee	Black	White
35	Davis, Wilbert Ray	Black	White
36	Diddlemeyer, Gerald	White	Black
37	Downs, William	White	White
38	Drayton, Leroy	Black	White
39	Elkins, Michael	White	White

40	Elmore, Edward Lee	Black	White
41	Evans, Kamell Delshawn	Black	White
42	Evins, Fredrick	Black	White
43	Ferrell, Dallas Clarence	White	White
44	Finklea, Ron Oneal	Black	Unknown
45	Franklin, Ellis	Black	White
46	Gardner, Joseph	Black	White
47	Gaskins, Donald Henry	White	Black
48	Gathers, Demetrius	Black	Unknown
49	George, Ricky	Black	White
50	Gilbert, Larry	Black	White
51	Gill, Eric Andrew	Black	Unknown
52	Gleaton, J.D.	Black	White
53	Goolsby, Sidney Ross	White	White
54	Green, Anthony	Black	White
55	Hall, Larry Eugene	White	White
56	Haselden, Jeffrey	White	White
57	Hawkins, Calvin	Black	White
58	Hicks, William	Black	White
59	Hill, David Clayton	White	White
60	Hill, David Mark	White	White & Black
61	Holmes, Bobby Lee	Black	Black
62	Howard, Ronnie	Black	White
63	Hudgins, Joseph	White	White
64	Huggins, Titus	Black	White
65	Hughes, Herman	Black	White
66	Hughes, Mar-Reece	Black	White
67	Hughey, John	Black	Black
68	Humphries, Shawn	White	White
69	Hyman, William Gibbs	White	White
70	Ivey, Thomas	Black	White
71	Johnson, Richard	White	Black
72	Johnson, Roger Dale	White	White
73	Jones, Donald Allen	Black	White
74	Jones, Jeffrey L.	Black	White
75	Kelly, Theodore	Black	Black
76	Kelly, William	White	White
77	Koon, Paul Finley	White	White
78	Kornahrens, Fred	White	White
79	Laney, Michael	White	Black
80	Linder, Michael	White	Black
81	Lindsey, Marion	White	White
82	Locklair, Jimmy	White	White
83	Longworth, Richard	White	White
84	Lucas, Cecil Doyle	White	White

85	Mahdi, Mikal D.	Black	White
86	Manning, Warren D.	Black	White
87	Matthews, Earl	Black	White
88	McClure, David, Jr.	White	White
89	McWee, Jerry	White	White
90	Mercer, Kevin	Black	Black
91	Middleton, Frank	Black	Black
92	Moore, Richard Bernard	Black	White
93	Morgan, Eric Dale	White	White
94	Motts, Jeffrey Brian	White	White
95	Nance, Robert Lee	Black	White
96	Norris, John Foster	Black	Black
97	Northcutt, Clinton	White	White
98	Orr, Ronald John	White	White
99	Owens, Alvin	White	White
100	Owens, Freddie	Black	Black
101	Passaro, Michael	White	White
102	Patrick, Gary Lee	White	White
103	Patterson, Raymond, Jr.	Black	White
104	Patterson, Wardell	Black	White
105	Peterson, Mose, III	Black	White
106	Pierce, Marcellus, Jr.	Black	White
107	Plath, John	White	Black
108	Plemmons, Jerry	White	White
109	Powers, Ted	White	White
110	Quattlebaum, B.J.	White	White
111	Ray, Johnny, Jr.	White	White
112	Reed, James Earl	Black	Black
113	Reed, Jerry Lee	Black	White
114	Riddle, Earnest	White	White
115	Roach, James Terry	White	White
116	Roberts, Sammy David	White	White & Black
117	Roberts, Tyree Alfonzo	Black	White & Black
118	Robertson, James	White	White
119	Rocheville, David	White	White
120	Rogers, Timothy D.	Black	White
121	Rosemond, Andre	Black	White
122	Sapp, Jesse Waylon	White	White
123	Shafer, Wesley	White	White
124	Shaw, Joseph Carl	White	White
125	Shuler, Calvin	Black	White
126	Shuler, Charles	White	White
127	Sigmon, Brad Keith	White	White
128	Simmons, Jonathan Dale	Black	White
129	Simmons, Kenneth	Black	Black

130	Simpson, Keith L.	Black	White
131	Sims, Mitchell	White	White
132	Singleton, Fred	Black	White
133	Skipper, Ronald DeRay	White	White
134	Sloan, Michael A.	White	White
135	Smart, Ronald Francis	White	White
136	Smith, Andrew Lavern	Black	Black
137	Smith, Rebecca	White	White
138	South, Robert	White	White
139	Southerland, Robert	White	White
140	Spann, Sterling Barnett	Black	White
141	Stanko, Stephen	White	White
142	Starnes, Norman	White	White
143	Stewart, Richard	Black	White
144	Stokes, Samual Louis	Black	White
145	Stone, Bobby Wayne	White	White
146	Stubbs, Craig Anthony	Black	White
147	Tench, Christopher Dale	White	White
148	Terry, Gary	White	Black
149	Thompson, Albert "Bo"	Black	White
150	Torrence, Michael	White	White
151	Truesdale, Louis	Black	White
152	Tucker, James N.	White	White
153	Tucker, Richard	Black	White
154	Tyner, Rudolph	Black	White
155	Vasquez, Angel Joe Pierre	Black	White & Black
156	Victor, William Keith	White	White
157	Von Dohlen, Herman	White	White
158	Weik, John Edward	White	White
159	Weldon, Dana	Black	White
160	West, Floyd	White	White
161	Whipple, James	White	White
162	Williams, Charles	Black	White
163	Williams, George Allen	Black	Black
164	Williams, Luke, III	White	White
165	Wilson, James William	White	Black
166	Winkler, Louis Michael	White	White
167	Wise, Arthur Hastings	Black	White
168	Wood, John Richard	White	White
169	Woods, Anthony	Black	White
170	Woods, Stanley Eugene	Black	Unknown
171	Woomer, Ronald	White	White
172	Yates, Dale Roberts	White	White
173	Young, Kevin Dean	Black	White



**Race of Defendants – Total**

Black	82	55.7%
White	91	44.3%

**Race of Victims by Case – Total**

Cases with at least one white victim	141	81.5%
Cases with no white victims	28	16.2%
Race of victim unknown	4	2.3%

**Defendant/Victim Race Combinations**

Black Defendant/at least one white victim	61	35.26%
Black Defendant/no white victims	17	9.827%
Black Defendant/race of victim unknown	4	2.3%
White Defendant/at least one white victim	80	46.24%
White Defendant/no white victims	11	6.358%
White Defendant/race of victim unknown	0	0%

APPENDIX C

South Carolina Inmates On Death Row As Of August 1, 2008

	<b>Name</b>	<b>Defendant's Race</b>	<b>Victim's Race</b>
1	Alesky, Bayan	White	Black
2	Allen, Quincy	Black	White & Black
3	Ard, Joseph	White	White
4	Bell, William Henry, Jr.	Black	White
5	Bennett, Johnny	Black	Black
6	Binney, Jonathan Kyle	White	White
7	Bixby, Steven Vernon	White	White & Black
8	Bowman, Marion, Jr.	Black	White
9	Bryant, James Nathaniel	Black	White
10	Charping, Michael	White	White
11	Cottrell, Luzenski Allen	Black	White
12	Council, Donny	Black	White
13	Elmore, Edward Lee	Black	White
14	Evans, Kamell Delshawn	Black	White
15	Evins, Fredrick Antonio	Black	White
16	Finklea, Ron Oneal	Black	Black
17	Franklin, Ellis	Black	White
18	Gardner, Joseph	Black	White
19	Haselden, Jeffrey	White	White
20	Huggins, Titus	Black	White
21	Hughes, Mar-Reece	Black	White
22	Hughey, John Kennedy	Black	Black
23	Ivey, Thomas	Black	White
24	Johnson, Roger Dale	White	White
25	Jones, Donald Allen	Black	White
26	Jones, Jeffrey L.	Black	White
27	Kelly, Thodore	Black	Black
28	Lindsey, Marion	White	White
29	Locklair, Jimmy	White	White
30	Mahdi, Mikal D.	Black	White
31	McClure, David, Jr.	White	White
32	Mercer, Kevin Jermaine	Black	Black
33	Moore, Richard Bernard	Black	White
34	Motts, Jeffrey Brian	White	White
35	Nance, Robert Lee	Black	White
36	Northcutt, Clinton Robert	White	White
37	Owens, Freddie	Black	Black
38	Riddle, Ernest	White	White

39	Roberts, Tyree Alfonzo	Black	White & Black
40	Robertson, James	White	White
41	Rogers, Timonay D.	Black	White
42	Rosemond, Andre	Black	White
43	Sapp, Jesse Waylon	White	White
44	Shuler, Charles	White	White
45	Sigmon, Brad Keith	White	White
46	Simmons, Kenneth	Black	Black
47	Sims, Mitchell	White	White
48	Singleton, Fred	Black	White
49	Stanko, Stephen	White	White
50	Starnes, Norman	White	White
51	Stokes, Sammie Louis	Black	White
52	Stone, Bobby Wayne	White	White
53	Terry, Gary	White	Black
54	Vasquez, Angel Joe Pierre	Black	White & Black
55	Weik, John Edward	White	White
56	Williams, Charles	Black	White
57	Williams, Luke, III	White	White
58	Wilson, James William	White	Black
59	Winkler, Louis Michael	White	White
60	Wood, John Richard	White	White
61	Woods, Anthony	Black	White

### **Race of Defendants – Total**

Black	34	55.7%
White	27	44.3%

### **Race of Victims By Case – Total**

Cases with at least one white victim	51	83.6%
Cases with no white victims	10	16.4%

### **Defendant/Victim Race Combinations**

Black Defendant/at least one white victim	27	44.26%
Black Defendant/no white victims	7	11.48%
White Defendant/at least one white victim	24	39.34%
White Defendant/no white victims	3	4.92%