

The California
Death Penalty is
Discriminatory,
Unfair, and
Officially Suspended.

**So Why Does
Los Angeles
District Attorney
Jackie Lacey Still
Seek to Use It?**

ACLU

Los Angelenos have repeatedly and overwhelmingly rejected the death penalty at the ballot box.¹ The death penalty is racially biased, and all too often, it is handed down to those with the worst lawyers. Again and again, we have seen that innocent persons were wrongly convicted and sentenced to death in California.² As Los Angeles District Attorney Jackie Lacey recognizes, the death penalty does not deter crime and does not provide closure to victims.³ A formal commission tasked with considering the death penalty in California concluded it is a dysfunctional disaster in practice, and that it would require substantial new funding to address the problems with appellate review.⁴ This conclusion was echoed this spring by two justices of the California Supreme Court who described the death penalty in California as “an expensive and dysfunctional system that does not deliver justice or closure in a timely manner, if at all.”⁵

In March of this year, Governor Gavin Newsom issued a statewide moratorium on the death penalty in California, dismantled the execution chamber, and withdrew the state’s lethal injection protocols.⁶ Yet Lacey has continued to allow death penalty trials to go forward. As Deputy District Attorney Michele Hanisee acknowledges, “It’s got to be really confusing for the average citizen who sees both things going on and doesn’t understand how all of the above [death penalty trials and a statewide moratorium] can be occurring.”⁷ Not only confusing, Lacey’s continued usage of the death penalty at new trials is downright wrong. Lacey was sworn in as the 42nd district attorney for Los Angeles in December 2012. To date, 22 people have received the death penalty in Los Angeles County while she has been in office.⁸ An examination of the 22 death penalty verdicts returned under Lacey’s tenure reveals evidence of the death penalty’s most serious albatrosses: racial bias and inadequate defense counsel.

Key Findings

1. Every Defendant Sentenced to Death Under Jackie Lacey’s Tenure Is a Person of Color

All of the 22 people who have received death sentences while Lacey has been in office are people of color; 13

Latinx defendants, eight Black defendants, and one Asian defendant have been sentenced to die under Lacey’s administration.⁹ **Zero white defendants have been sentenced to die in this period.**

The overwhelming majority of victims in homicide cases in Los Angeles are persons of color. Between 2000 and 2015, Latinx, Black, and Asian homicide victims collectively comprised 87% of the victims of homicide in Los Angeles County, while white homicide victims constituted only 12%.¹⁰ Nonetheless, more than a third (36%) of the 22 defendants sentenced to death during Lacey’s term involved at least one white victim.¹¹

The pernicious role of racial bias is not new to the operation of the death penalty in Los Angeles, or California as a whole. Study after study has found discrimination in police and prosecutor charging practices, and in the imposition of the death penalty.¹²

The response of Los Angeles Deputy District Attorney Hanisee to the problem of racial discrimination in the death penalty is a bizarre one. She suggested that California execute the white people. She said, “Of the 24 or so who are presently eligible for execution, half of them are white men. So let’s execute them.”¹³ Executing someone on the basis of their race is, of course, unconstitutional.¹⁴

2. Not a Fair Fight: Disbarred and Suspended Defense Counsel and Pro Se Defendants

Of the 22 death penalty sentences imposed under Lacey, over a third of the defendants (8 people) were represented by counsel who had prior or subsequent serious misconduct charges. Specifically, public bar records indicate that defense counsel in five cases were previously or subsequently suspended or disbarred, the most serious levels of discipline for ethical violations.¹⁵ Defense counsel for two other defendants was put on probation on three occasions, and counsel for the eighth defendant currently faces multiple bar charges.¹⁶ In yet another case, defense counsel waived opening statements, a critical opportunity to frame the case for the jury, and put on no defense at all in the guilt phase.¹⁷ He then repeatedly fell asleep during the guilt and penalty phases of the capital trial.¹⁸ Furthermore, in an additional case, the defendant represented himself

at trial and presented no evidence at the guilt phase.¹⁹ He also presented no evidence or argument at the penalty phase in support of a life verdict as opposed to death sentence.²⁰

Institutional defenders (i.e., public defenders), with specialized death penalty training and adequate staffing on capital cases, often provide a markedly higher level of representation than private lawyers appointed in capital cases.²¹ Even though institutional defenders represent the majority of capital cases,²² of the 22 cases with death verdicts, the institutional defenders represented only three. The vast majority – 19 of the 22 cases – were handled by private appointed or retained lawyers. In Los Angeles, private appointed lawyers may have an incentive to work against their clients’ interests: they are guaranteed payment of their full fee only if they take the case to trial, which may discourage them from seeking life-saving plea bargains for their clients.²³

Abysmal lawyering has long been a predictor of who will actually receive the death penalty.²⁴ Good lawyering is necessary to uncover witness bias, expose false testimony, and make the case for life by giving the jury important evidence about the person’s life and background that would support rejection of the death penalty. Failures of defense counsel, along with prosecutorial misconduct, are chief contributors to wrongful convictions.²⁵ Because of the serious and intractable problems with underfunding and delay in California’s appellate review system, it is likely to be decades before the full scope of the problems is clear and the issue of ineffective counsel is scrutinized by the courts.²⁶ The last two California death row exonerees won their freedom only approximately 25 years after their convictions – delays that are only likely to grow given California’s long and growing appellate backlog.²⁷

3. District Attorney Lacey’s Actions Have Furthered Los Angeles’s Role as the Nation’s Largest Producer of Death Sentences

In absolute numbers, no county in the United States has produced more death sentences than Los Angeles. Of the 723 people currently under a sentence of death in California, 222 – or nearly a full third (31%) – are from Los Angeles County.²⁸ Even as death sentencing plummets nationwide, Los Angeles remains an outlier.

Los Angeles (CA), Riverside (CA), and Maricopa (AZ) Counties were the only three counties nationwide to have more than 10 death sentences over the last five-year period, from 2014 through 2018.²⁹ Out of more than 3,100 counties nationwide, in 2018, Los Angeles was one of only four counties with more than one death sentence.³⁰

Los Angeles remains an outlier even after accounting for its large size. Per capita, Los Angeles over the last five years has had more death sentences than 53 of the 58 counties in California.³¹ Over the past five years, Los Angeles has also produced more death sentences per capita than any large county in Texas, North Carolina, Pennsylvania, Utah, Washington, or Georgia.³²

Conclusion

Continuing to seek the death penalty in Los Angeles is not only a waste of taxpayer dollars, but it is out of step with the desires of the voters in the county. It is also morally wrong. The death penalty discriminates on the basis of race and against the poor, and it is administered disproportionately and arbitrarily based on a defendant’s ZIP code and the quality of one’s attorney. The death penalty is out of step with the value of equal justice that Los Angeles residents demand. It is time for District Attorney Lacey to step up and step away from the death penalty.

Endnotes

- 1 A majority of Los Angeles voters voted in favor of Proposition 34 in 2012 and Proposition 62 in 2016, two ballot propositions to repeal the death penalty. *Los Angeles County Election Results*, Los Angeles County Registrar-Recorder/County Clerk (Nov. 6, 2012 & Nov. 8, 2016).
- 2 Five persons have been removed from death row after their exonerations: Ernest Graham (exonerated in 1981 after 5 years on the row), Troy Jones (exonerated in 1996 after 14 years on the row), Oscar Morris (exonerated in 2000 after 17 years on the row), Patrick Croy (exonerated in 2005 after 26 years on the row), and Vicente Benavides (exonerated in 2018 after 25 years on the row). All five exonerees are persons of color. See Death Penalty Information Center Innocence Database, https://deathpenaltyinfo.org/innocence?inno_name=&exonerated=&state_innocence=12&race=All&dna=All.
- 3 Gil Garcetti, *It's Time to End the Death Penalty*, Orange Co. Register (Oct. 20, 2016) (quoting Lacey's statements in an interview with ABC 7).
- 4 California Commission on the Fair Administration of Justice Final Report, Santa Clara Law Digital Commons, 19-21 (Gerald Uelmen & Chris Boscia eds., June 30, 2008).
- 5 *People v. Potts*, 6 Cal. 5th 1012, 1063 (March 28, 2019) (Liu, J., concurring, joined by Cuellar, J.); see also, *Jones v. Chappell*, 31 F. Supp. 3d 1050, 1053 (C.D. Cal. 2014) (federal court examining California's system in detail and concluding it was unconstitutionally dysfunctional and "plagued by inordinate and unpredictable delay"), *rev'd on other grounds sub nom.*, *Jones v. Davis*, 806 F.3d 538 (9th Cir. 2015).
- 6 See Exec. Order N-09-19 (March 13, 2019), <https://www.gov.ca.gov/wp-content/uploads/2019/03/3.13.19-EO-N-09-19.pdf>.
- 7 Tim Arango, *Why the Golden State Killer May Keep California's Death Penalty Alive*, N.Y. Times (May 9, 2019), <https://www.nytimes.com/2019/05/09/us/california-death-penalty.html>.
- 8 The Habeas Corpus Resource Center (HCRC) is required by California Rules of Court to maintain a current list of persons sentenced to death by date of judgment. Cal. R. Court 4.561(c). The list includes sentencing date and county of conviction. See http://www.hcrc.ca.gov/4.561/HCRC_4.561-list.pdf. HCRC's list of persons sentenced to death in Los Angeles County since Lacey took office includes: Isauro Aguirre, Ronald Brim, Robert Caballero, Osman Canales, Leonardo Cisneros, Lonnie Franklin Jr., Kevin Haley, Corey King, Desi Marentes, Angel Mendoza, Joseph Mercado, Heraclio Meza, Ka Pasasouk, Kevin Pearson, Christian Perez, John Perez, David Ponce, Luis Rodriguez, Rudy Anthony Ruiz, Charles Smith, Michael Thomas, and Chester Turner. *Id.* Chester Turner's sentencing date is listed in HCRC's list as July 10, 2007, but he was tried and sentenced to death for additional homicides on August 1, 2014, during Lacey's term. Andrew Blankstein & Jack Leonard, *Chester Turner, Serial Killer on Death Row Is Charged with Four More Murders*, L.A. Times (Feb. 2, 2011), <https://www.latimes.com/local/la-xpm-2011-feb-02-la-me-serial-killer-20110202-story.html>. Charles Smith was tried initially in 2010 and his first jury was hung at the guilt phase. Jack Leonard, *Alleged Gang Member Is Convicted of Murder in 49th Street Massacre*, L.A. Times (May 18, 2010), <https://www.latimes.com/archives/la-xpm-2010-may-18-la-me-49th-street-massacre-20100518-story.html>. At the retrial in 2010, a second jury convicted Smith but split over the question of punishment. Jack Leonard, *Jury Deadlocks on Death Penalty in 49th Street Massacre*, L.A. Times (June 17, 2010), <https://latimesblogs.latimes.com/lanow/2010/06/jury-deadlocks-on-death-penalty-in-49th-street-massacre.html>. Lacey permitted a third trial to go forward on the issue of punishment, subjecting Los Angeles taxpayers to the expense of a third trial despite the verdicts of the first two juries.
- 9 The NAACP Legal Defense and Educational Fund maintains a database of the names and races of defendants on death row in each state. Of the 22 defendants from Los Angeles County listed by the HCRC, zero are identified as white in the NAACP's database. See Deborah Fins, *Death Row U.S.A. Fall 2018, A Quarterly Report by the Criminal Justice Project of the NAACP Legal Defense and Educational Fund, Inc.* 42-46, <https://www.naacpldf.org/wp-content/uploads/DRUSAFall2018.pdf> (listing the race of the death row prisoners, including all 22 identified on the HCRC list during Lacey's term, *supra* note 8).
- 10 See, e.g., Armand Emamdjomeh and Ryan Menezes, *Homicide Report*, L.A. Times, Feb. 27, 2015 (between 2000 and 2015, 49% of victims were Latinx, 34% were Black, 12% were white, and 4% were Asian).
- 11 The cases of these defendants sentenced to death under Lacey include at least one white victim: Kevin Haley, Ka Pasasouk, Kevin Pearson, Christian Perez, John Perez, David Ponce, Rudy Anthony Ruiz, Michael Thomas. This information was gathered by identifying the name of the victims from those cases and using *The Homicide Report* to determine the race of the victims. *The Homicide Report*, L.A. Times, <https://homicide.latimes.com/>.
- 12 See, e.g., Glenn L. Pierce & Michael L. Radelet, *The Impact of Legally Inappropriate Factors on Death Sentencing for California Homicides, 1990-1999*, 46 Santa Clara L. Rev. 1 (2005) (finding persons charged with killing white victims were much more likely to be sentenced to death than in cases with victims of color); Nick Peterson, *Examining the Sources of Racial Bias in Potentially Capital Cases: A Case Study of Police and Prosecutorial Discretion*, 7 Race & Justice 1 (2016) (analyzing charging decisions and concluding prosecutors were more likely to charge cases with white victims with death-eligible offenses than similar cases with victims of color); Nick Peterson, *Cumulative Racial and Ethnic Inequalities in Potentially Capital Cases: A Multistage Analysis of Pretrial Disparities* (2017) (documenting additional discrimination in charging the death penalty more frequently in cases with white victims than those without).
- 13 See Arango, *supra* note 7.
- 14 See, e.g., *McCleskey v. Kemp*, 481 U.S. 279, 293 (1987) (purposeful racial discrimination violates the equal protection clause and is unconstitutional).
- 15 These attorneys include: (1) William L. McKinney, counsel for defendant Desi Angel Marentes, who was disbarred in 2017, following sanctions in 2003 for failing to cooperate in an investigation, in 2006 for failing to communicate with a client, a suspension in 2014 for his deficient handling of a writ of habeas corpus, and additional subsequent bar violations. See <http://members.calbar.ca.gov/courtDocs/15-O-13944-2.pdf>; (2) Lawrence R. Young, counsel for Rudy Anthony Ruiz (sentenced in 2013), who was disbarred in 2013, shortly after the penalty phase of the trial, following a string of prior suspensions. See <http://members.calbar.ca.gov/courtDocs/11-O-19168-2.pdf>; (3) Carlos Joel Perez, the other counsel for Ruiz, who was admitted to practice law in December 2012, is currently ineligible to practice law and faces multiple pending discipline charges, including a May 2019 order recommending his disbarment following his criminal conviction for fleeing police officers while driving without a license. See <http://members.calbar.ca.gov/fal/Licensee/Detail/285936>; (4) Jonathan Edward Roberts, counsel for defendant Chester Turner (sentenced in 2014) and Heraclio Meza (sentenced in 2017), who is currently ineligible to practice law following discipline and suspensions arising out of his handling of a criminal trial, criminal appeals, and two habeas petitions, and his failure to pass the ethics exam. See <http://members.calbar.ca.gov/courtDocs/17-O-01764-1.pdf>; and (5) Seymour Amster, counsel for Lonnie Franklin, who was previously suspended, <http://members.calbar.ca.gov/fal/Licensee/Detail/105308>.
- 16 See Geoffrey Pope, counsel for Ronald Brim and Angel Mendoza, who was three times placed on probation by the state bar for unspecified ethical violations in 1991, 1993, and 1995. See <http://members.calbar.ca.gov/fal/Licensee/Detail/67172>. Donald Calabria, "The Law Dogg," was counsel for David Cruz Ponce, sentenced to death in 2018. Calabria faces 28 pending charges of misconduct involving his alleged failures to provide legal services to seven separate clients, all of which took place between 2016 and 2017. See <http://members.calbar.ca.gov/courtDocs/17-O-00942.pdf>.
- 17 *People v. Leonardo Alberto Cisneros*, No. VA087669-02, RT 1197 (waiving opening statement); 3192 (waiving the reserved opening statement and resting without presenting any evidence).
- 18 *People v. Leonardo Alberto Cisneros*, No. VA087669-02, RT 3873-74 (counsel stating after a witness examination that he had "dozed off" during the testimony and the trial court referencing an earlier complaint by the defendant about the same); RT 4449 (defendant stating on the record the failings of his counsel, including the fact that lead counsel repeatedly fell asleep at both phases of the trial).

- 19 See *People v. Kevin Haley*, No. A757948-01, RT 2676 (waiving opening statement); RT 3346-47 (resting without presenting any evidence).
- 20 *People v. Kevin Haley*, No. A757948-01, RT 3611 (Haley waived penalty opening); RT 4002 (presented no evidence at penalty phase); RT 4084 (waived penalty closing argument).
- 21 See generally Brandon L. Garrett, *The Decline of the Virginia (and American) Death Penalty*, 105 Geo. L. J. 661 (2017) (describing the role of institutional defenders in raising the standard of practice and bringing Virginia's death sentencing rate to zero).
- 22 Cal. Comm. on the Fair Admin. of Just., *supra* note 4, at 125 ("In Los Angeles county, approximately half of the ongoing death penalty cases are handled by the Public Defender, and half are handled by the Alternative Public Defender or appointed counsel.").
- 23 Attorneys who settle cases pre-trial are guaranteed only 40% of their fee. See County of Los Angeles Memorandum of Understanding Re Central District Capital Case Appointments, Section C Payment Schedule (setting forth various stages of payment of the flat fee: 15% at the appointment, 25% at the conclusion of preliminary hearing or arraignment, 10% upon announcing ready for trial, 15% at the conclusion of the People's case, 15% at the conclusion of trial, 15% at the conclusion of post-trial sentencing, and 5% upon settlement of the record on appeal). This creates a structural conflict between the attorney's private interest in fee collection and the client's interest in zealous advocacy, which may include pursuit of a plea agreement. See generally Rules of Professional Conduct of the State Bar of California, Rules 3-300 and 4-200; *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, Guideline 9.1(B) (2), (3) (rev. ed. 2003), in 31 Hofstra L. Rev. 913 (2003).
- 24 Stephen B. Bright, *Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer*, 103 Yale L. J. 1835 (1994).
- 25 Los Angeles exoneree Oscar Morris won his post-conviction case after the court found new evidence of his innocence, and prosecutorial misconduct was uncovered. See also *People v. Morris*, 46 Cal. 3d 1, 9, 249 Cal. Rptr. 119, 123, 756 P.2d 843, 847 (1988). It was later revealed that his defense counsel Ron Slick had unethically attempted to help the prosecution in a different capital case in 2001. DPIC, Innocence Cases, <https://deathpenaltyinfo.org/innocence-cases>. Slick was known for his willingness to try capital cases quickly - a quality that led to eight clients on death row. See e.g., Welsh White, *Litigating in the Shadow of Death*, 8 (2009).
- 26 See, e.g., Gerald F. Uelman, *Death Penalty Appeals and Habeas Proceedings: The California Experience*, 93 Marq. L. Rev. 495, 496, 504 (2009); Cal. Comm. on the Fair Admin. of Just., *supra*, note 4, at 19-20.
- 27 See DPIC Innocence Database, https://deathpenaltyinfo.org/innocence?inno_name=&exonerated=&state_innocence=12&race=All&dna=All. Patrick Croy was exonerated in 2005 for a wrongful 1975 conviction, and Vicente Benavides was exonerated in 2018 for a wrongful 1993 conviction.
- 28 HCRC's list of death sentenced prisoners, <http://www.hcrc.ca.gov/4.561/index.php>.
- 29 Death Penalty Information Center, *Death Penalty Sentencing Information, 2018, 2017, 2016, 2015, and 2014, Death Sentences by Name, Race, and County*, <https://deathpenaltyinfo.org/death-penalty-sentencing-information>.
- 30 Death Penalty Information Center, *The Death Penalty in 2018: Year End Report*, <https://deathpenaltyinfo.org/documents/2018YrEnd.pdf>.
- 31 Only Riverside, Tulare, Kern and El Dorado Counties have higher per capita death sentencing rates than Los Angeles in the last five years. See DPIC County data by year, *supra*, note 29 (death sentences); California Department of Finance, *E-2 California County Population Estimates and Components of Change by Year - July 1, 2010 - 2018 (July 1, 2017 and July 1, 2018)* <http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-2/index.html>.
- 32 See DPIC County data by year, *supra* note 29.